

# SUPREME COURT OF THE UNITED STATES.

No. 197.

APRIL 23, 1860.—Ordered to be printed.

UNITED STATES, APPELLANTS,

VS.

FRANCIS P. FERREIRA, ADMINISTRATOR OF FRANCIS  
PASS, DECEASED.

APPEAL FROM THE DISTRICT COURT, U. S., FOR THE NORTHERN DISTRICT OF  
FLORIDA.

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District court of the United States for the northern district of Florida.

FRANCIS P. FERREIRA, administrator of	}
Francis Pass, deceased,	
<i>vs.</i>	
THE UNITED STATES.	

Be it remembered that, on the 21st day of February, 1850, the said Francis P. Ferreira, administrator of Francis Pass, deceased, appeared and filed before the judge of the district court of the United States for the northern district of Florida, his petition, in words and figures following, to wit:

To the Hon. J. H. Bronson, judge of the northern district of Florida, authorized to receive this petition by act of Congress, passed 3d of March, 1849, entitled "An act for the relief of Peter Capella," &c., the petition of Francis P. Ferreira, of the city of St. Augustine, in the county of St. John's, and State of Florida, administrator of all and singular the goods and chattels, lands and tenements, rights and credits, of Francis Pass, deceased, respectfully sheweth:

That the said Francis Pass in his lifetime, to wit, in the years 1812 and 1813, was a resident inhabitant in East Florida, living at a place called "Sampson," about twenty miles northwest of the city of St. Augustine, in the said then province of East Florida, the said Pass being at that time, and for many years previously, a subject of the King of Spain, within and under whose dominion the aforesaid East Florida then existed.

That the said Francis Pass, for several years previous to the said year 1812, cultivated a small plantation with four hands, and kept beef and stock cattle, being extensively engaged in butchering and raising stock, and supplying the market of said St. Augustine.

That, in the said years of 1812 and 1813, a large body of troops in the service of the United States, under the superior command of General Mathews and General McIntosh, and the subordinate command of Colonel Smith and Colonel Manning, invaded East Florida, and seduced many persons who lived in that province, and who were subjects of the King of Spain, to join the said troops of the United States. Headed by the American officers, great depredations were committed, and the grossest violence and ill-treatment, on the inhabitants, who were Spanish subjects, and faithful to the King of Spain. For a more perfect history of which your honor is referred to in the testimony taken generally, for use or information in these claims, by the predecessor of your honor, (the late Robert R. Reid,) and to the mass of testimony taken in the several claims adjudicated by your honor, to extracts from which your petitioner prays leave to refer, in collecting the testimony on the following claim.



That the said Francis Pass, in the said years 1812 and 1813, was a true zealous friend and subject of the King of Spain, and used his best efforts to protect his property and his own life from the violence and injuries committed in the said years by the American troops and their deluded adherents, calling themselves patriots; but all his efforts against a body of armed troops were in vain, and he, during said years 1812 and 1813, suffered the following losses, as your petitioner is informed and verily believes, to wit:

Crops of 1812, on plantation at "Sampson," consisting of corn, potatoes, peas, pumpkins, and some garden vegetables, valued at.....	\$600 00
150 bushels of corn in the crib, of the crop of 1811, at \$1 per bushel .....	150 00
2 horses, valued at \$40 each.....	80 00
2 breeding mares, valued at \$40 each .....	80 00
200 head of hogs, at \$2 50 each.....	500 00
700 head of beef cattle, at \$10 per head.....	7,000 00
100 head of stock cattle, at \$5 per head.....	500 00
4 dozen head of poultry.....	25 00
Plantation tools, household furniture, hoes, axes, saddles, &c.....	150 00
	<hr/>
	\$9,085 00

making, in all, the sum of nine thousand and eighty-five dollars.

And your petitioner further sheweth unto your honor, that the said Francis Pass died intestate some time about the year 1822, and shortly after the exchange of flags, and, when he died, was a poor man and in very destitute circumstances, and that he died before any act of Congress was passed providing for the adjudication and payment of such losses.

That said Pass left no heirs in Florida, or any other place, that are known to your petitioner, nor did any person represent or take administration upon his estate until the same was recently administered upon by your petitioner; consequently there was no representative or relative of the said Pass to interest themselves and present the said claim for adjudication within the time prescribed and enacted by the act of Congress of June 26, 1834.

And your petitioner, further showing reasonable cause why petition was not presented within the time prescribed by the said act of 1834, and the reason why the claim is now presented by your petitioner, states, that the said Francis Pass, in his lifetime, was largely indebted to the father of your petitioner, Francis Ferreira, and died largely in his debt, as your petitioner learns from the papers of his said father, for cattle sold to the said Pass, and which, in all probability, were the cattle lost by the said Pass.

That the father of your petitioner died some time on or about the day of                      in the year of our Lord, eighteen hundred and

twenty-two, without collecting the said debt in any manner, and without administering upon the estate of said Pass, and before any act of Congress was passed authorizing presentations of said claims.

And your petitioner further sheweth unto your honor, that the said Francis Ferreira, father of your petitioner, died intestate, leaving your petitioner and three other children; and that administration has never been taken upon the estate of the said Francis Ferreira, but that John Ferreira, a brother of your said petitioner, is about administering thereupon; that the said children of the said Francis Ferreira, including your petitioner, were small, and had no knowledge of their father's business, and did not any of them know the said Pass had a claim for losses, until within about eighteen months; with a hope of collecting the just demand of the estate of the said father of your said petitioner, this petition is presented.

And your petitioner further sheweth that this said claim, of said estate of said Pass for said losses, has never been paid, either by the Spanish or American governments, or any other person, but is an honest and just one, and should, in equity and honor, be paid by the United States.

Your petitioner trusts that, upon proof of the reasons herein alleged, reasonable cause will have been shown to your honor why petition was not presented within the time prescribed and enacted by said act of June 26, 1834; and therefore humbly prays that your honor will be pleased to receive testimony, and adjudicate this claim, under the provisions of the said act of Congress, and of the treaty with Spain, and of the rules of your honor's court made and provided in these cases.

\* FRANCIS P. FERREIRA,  
*Administrator.*

WILLIAM A. FORWARD,  
*Attorney and Solicitor for Claimant.*

STATE OF FLORIDA, *Northern District, to wit:*

Personally appeared before me, Francis P. Ferreira, the claimant above named, and who signed his name above, and maketh oath and saith, that the several matters and things hereinbefore set forth and contained are true, of his own knowledge, except as to those matters stated on information and belief; and as to those matters he believes it to be true.

FRANCIS P. FERREIRA.

Sworn before me this — day of February, 1850, at St. Augustine, in the county of St. John's, Florida.

GEORGE R. FAIRBANKS,  
*Clerk U. S. District Court, Northern District of Florida.*

Filed February 28, 1850.

*The Estate of Francis Pass, deceased.—Letters of Administration.*STATE OF FLORIDA, *County of St. John's:*By Gad Humphreys, judge of the probate court of St. John's county,  
to Francis P. Ferreira, greeting:

Whereas it has been shown to us that Francis Pass, late of St. John's county, in this State, hath lately departed this life at the city of Havana, on the Island of Cuba, and, as is represented to this court, died intestate, and without heirs, having and leaving goods and chattels, rights, credits, or other assets, within this State and county, by means whereof the ordering and granting administration of all and singular the same, and also the auditing, allowing, and finally discharging the accounts thereof, doth of right belong to us. We do, therefore, by virtue of these presents, and of the authority vested in us by law, nominate and appoint you, the said Francis P. Ferreira, administrator of all and singular the goods, chattels, rights, credits, and other assets of the said Francis Pass, deceased; hereby requiring you to make a full, true, and perfect inventory and appraisement thereof, and to cause the same to be returned to this office within sixty days from the date hereof, and dispose of the same according to law; to ask for, demand, recover, and receive, the debts which unto the said deceased did belong at the time of his death; and to pay the debts which the said deceased did owe, so far as such goods and chattels, rights and credits, and other assets, shall extend, and the law direct; and render unto us, from time to time, a faithful account of your doings, and particularly to render to us annually, according to law, at the first term of our court of probate, whenever and wheresover the same may be held, a full and correct account of your receipts and expenditures of the estate of the said deceased; to stand by and observe what may be further ordered in the premises.

In witness whereof, I, Gad Humphreys, judge and *ex-officio* clerk of our said court of probate, have hereunto set my hand and affixed [L. s.] the seal of the said court, at the city of St. Augustine, the 27th day of February, A. D. 1850.

G. HUMPHREYS,  
*Judge of Probate.*

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Before the judge of the district court of the United States, for the northern district of Florida, acting as commissioner, &c.

ST. AUGUSTINE, *October 18, 1850.*

In the matter of the claim of Francis P. Ferreira, administrator of Francis Pass, deceased, for losses in East Florida, in the years 1812 and 1813.

WILLIAM A. FORWARD,  
*Attorney.*

Joseph Papy, a witness on behalf of the claimant, being duly sworn, says: I am now between forty-nine and fifty years old; I was born in the city of St. Augustine, and have always lived in said city, and that is now my place of residence. I know Francis Pass, now deceased, who was living in this vicinity in 1812. He lived at a place called Sampson's, about twenty miles from St. Augustine, in a north-westerly direction, about ten miles from the river St. John's, and about the same distance from the Jacksonville road. He planted some corn there, and used to keep his cattle there. He had been in the business of butchering here in the city, and he used to keep his cattle out there at Sampson, and also raised provisions there, corn, potatoes, peas, pumpkins, &c.; and he also raised some hogs. He had four negro hands on that place; four men, by whom he carried it on and planted, &c. In 1812, he planted about twenty or twenty-five acres; some of it had been cow-penned. He was permitted by the governor to plant there; but I do not think he owned the land. He planted about one acre of potatoes, and all the rest was corn, say twenty to twenty-five acres; peas and pumpkins were planted with the corn. He had a small garden attached to his house there, in which he planted the usual garden vegetables. He had no wife, but used to live there, and one of his black men cooked for him. He had tables and chairs, and knives and forks in his house; also, bed and bedding, blankets, and mattresses, &c., in all, worth about \$40 or \$50, I should think. He also had some plantation tools, plows, hoes, axes, &c. Can't say how much they were worth. I think he would raise about twenty bushels of corn to the acre on that land, and also a great many potatoes. His potatoes yielded well, but I cannot tell how much to the acre. He had corn in his corn-house, and also in his cribs, of the crop of 1811, when the patriots run him off from his place in 1812.

The patriots made him leave the place, and everything that he had there, in 1812, and he came into town, and, when he got here, he could not return, because no person was allowed to leave the city. I think it was in July when he left and came in. The corn was then as high as my head. At that time the city was besieged by the patriots and American troops. They were all around the city. They had a camp out at Hulbut's place, four miles from town. There were, also, some at Picolatos, some at Camp New Hope, and some at the Cow-fords, on the St. John's. They were all about, and had complete possession of the country, and nobody could venture to go out of the city.

My father was a butcher previous to and in 1812, and I used to go out to Pass's place, at Sampson, to get cattle. When Pass came into town, as above mentioned, he brought nothing with him; left everything at his place, and he could not go out to get it, because the patriots would catch him. I was out there at his place after the patriots came to the Cow-ford, and, I think, about a month before he came into town; but at that time, when I was there, they had not yet been at his place. I was there again about eight or ten days after the patriots and American troops evacuated the country, and his place was all destroyed; the buildings and fences all burned, and nothing was left. When he came to town he lived with Mr. Ferreira, the father of the present claimant, and remained with him until he went to Cuba, where he died.

Pass was poor after he came to town. He was an old man, not able to work, and out of business, dependant upon Mr. Ferreira, and lived with him some years, until he finally went to Cuba, and died there, as I have understood. He went to Cuba about two or three years, I think, after the change of flags, and up to that time he had lived with Mr. Ferreira, and been supported by him; and, before he went to Cuba, I heard him say to Mr. Ferreira that he had nothing to pay him; but, if he, (Ferreira,) could get anything for the losses he had suffered in the patriot war, or by the United States soldiers and patriots in 1812, he might get it and pay himself. Pass was never married. He had no brothers, sisters, children, or relation, that I know of. He was a Spanish subject. A Spaniard by birth, I believe; and I understood he came from Mexico to Havana, and from thence to Florida. He had lived in Florida many years. I had known him ever since I can remember, and since I was a very small boy.

Pass was a man in good circumstances and well off, before he was broken up and ruined by the patriots. He used to keep about six hundred head of beef-cattle, and about an hundred head of stock-cattle. He used to keep these cattle at his place called Sampson; and he had as many as that, I think, when the patriots came into the country in 1812. He used to bring cattle here to town, and butcher them here. He used to butcher here for the Spanish army. He was also in the habit of selling beef-cattle to others who wanted them to butcher. His beef-cattle were worth \$10 per head. He was in the habit of selling them for that price. His stock-cattle were worth about \$5 per head.

I think he used to keep about one hundred and fifty or two hundred hogs, worth about \$2 50 per head. He had two horses and two mares, which he left at his place, as he said, when he came into town. I heard him say that the horses were out in the range, and he had not time to get one to come in with. I do not think the horses and mares were worth more than about \$40 each.

I think there were about four or five hundred bushels of corn in the corn-house, (in the ear,) of the crop of 1811. Shelled corn, at that time, was worth \$1 per bushel. I used to see poultry there also, but I cannot say how much, or what kind.

Old Mr. Ferreira, the father of the present claimant, was drowned in a vessel which was lost from this place many years ago. It was a vessel running between this place and Havana. Pablo Fontone and Mrs. Travers, and several others from this place, were lost at the same time. I think it must have been twenty-five years ago.

Mr. Ferreira left only three children, all sons; one of whom is the present claimant and administrator of Pass. His widow is still living, and married to Francis Gue, who has since died; but there was nobody that looked after the estate of Ferreira or administered upon it.

It was about three or four years ago that I first told the claimant of this claim, which was unknown to him before, as I understood from him. I have no interest in this claim in any way; neither am I in any way related to the administrator, Ferreira, or his family.

*Cross-examined.*

It is true that I was but eleven or twelve years old in 1812, yet I was in the habit of going all about the country with my brothers, and with my father's negroes when they went after cattle. I was frequently out at Pass's place (Sampson) with them, and also I went out there several times with old Mr. Pass himself, and I remember distinctly about his place and his property.

The property which I have mentioned—crops, cattle, &c., which he had—was upon his place the last time that I was there, before he came to town. I was not present when he left his place and came to town, and do not, of my own knowledge, know that the patriots were there, or that they drove him off. All I know on that subject is what he and others said after he came into the city; but the fact that he and other settlers in the country were driven off by the patriots, and took refuge in town, was quite notorious, and well known to every one; I never heard anything to the contrary.

I never saw any patriots or United States soldiers on his place, and do not, of my own knowledge, know that they were there, or that they destroyed his property. I do not know what became of it, but it was universally understood that the patriots took and destroyed the property of Pass and others, who abandoned their places and came into the city; and I have always understood that Pass's property shared the same fate as the rest.

I saw Mr. Pass within a day or two after he came into town; he told me that he had brought nothing with him, that he came in on foot. He said he was afraid the patriots would kill him if he staid at his place. He said he came off in a hurry; he said he understood they were at the Cow-ford, and would soon be at his place. John Ashton, I think, was the nearest neighbor to Pass, and he lived about six miles from him. I have an elder brother living, who, I think, was also in the habit of going to Pass's place previous to 1812.

JOSE PAPY.

Sworn and subscribed this 18th October, 1850, before me.

I. H. BRONSON,  
*Judge and Commissioner.*

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Before the judge of the district court of the United States, for the northern district of Florida, acting as commissioner, &c.

St. AUGUSTINE, *October 18, 1850.*

In the matter of the claim of Francis P. Ferreira, administrator of Francis Pass, deceased, for losses in East Florida in 1812 and 1813.

W. A. FORWARD,  
*Attorney.*

Martin Canovas, being duly sworn as a witness on behalf of claimant, says:

I am about fifty-eight years old; was born in the city of St. Augustine, and have always lived here, and now reside here; I knew Francis

Pass, deceased, in his lifetime, and was well acquainted with him; he was a Spanish subject; he is dead; he went from here to Cuba, and died there, I think, after the change of flags; I remember the McIntosh or patriot war in 1812 very well; at the time of the commencement of that war Francis Pass was living at a place called Sampson, about twenty miles northwesterly from this city; he was raising cattle and planting there; and was also engaged in butchering here in town, and kept his cattle out there.

He had then at that time about five or six hundred head of beef cattle, and about one hundred head of stock cattle.

He had four or five negroes, whom he owned, at his place in Sampson; they were principally engaged in planting. I supposed them to be his negroes, but he never told me that they were, and I do not know whether they were or not; he planted twenty or twenty-five acres, principally corn; about one acre of potatoes; and his peas and pumpkins with the corn; that land would yield about fifteen or twenty bushels corn to the acre. He had a house there in which he lived, and household furniture, such as tables, chairs, bed and bedding, and other things necessary for keeping house; his household furniture was worth about \$50, I should think; he had usual plantation tools, such as hoes, plows, axes, cart, and other things, worth in all \$60 or \$70; his stock cattle were worth at that time about \$5 per head; corn was then worth one dollar per bushel, and potatoes 50 cents per bushel; he had about 150 head of hogs in all, worth \$3 per head; he had also two working horses and two mares, worth about \$50 each.

He had also fowls and turkeys, three or four dozen head in all, worth a dollar a head all round.

At the time the patriot war broke out, Pass was considered to be in good circumstances, and well off; I was often at his place in those days, and have stayed there four or five days at a time; I used to help him drive up or gather his cattle, and was well acquainted with him and his property and affairs.

When the patriots came on he was obliged to leave his place and come into town; and after he came in here he was not allowed to go out, and, if he had been permitted to go out, he could not have gone, because the patriots were all around and all over the country; he came into town before the patriots encamped at Hulbut's place and laid siege to the city; they were on their march here, and had arrived at Cow-ford, I think, when he and other settlers from the country abandoned their places and came into town.

I think I had been at his place about a month or so before he came into town; at that time he had corn in his corn-house of the crop of 1811; I think, as much [as] three or four hundred bushels in the ear. I saw Pass when he came in; that is, I saw him the day after his arrival; he was at Mr. Ferreira's; he brought in nothing with him, at least, so he told me then; he said he left everything at his place; he told me that the patriots were coming on, and that all the other settlers of the country were coming in, and he came also; he told me that he came in a hurry, and came on foot; he did not tell me why he did not ride one of his horses; he never got any of his property; from that time forward he continued to live with Mr. Ferreira, and was dependant upon



him; he, Pass, was then an old man; was not engaged in any business, and was very poor up to the time that he left here; the patriots, during 1812, after they came on, had full possession of the whole country about here; no person could go out of town; the patriots killed and destroyed many cattle and hogs, and supplied themselves from the cattle and hogs of the country; there was no one else who could have taken the property of Pass and other settlers who abandoned their places except the patriots.

Four or five days after the American troops evacuated the country, in 1813, I went out to Sampson with Pass to look at his place, and see if anything was left there. The buildings and fences were all burned, and the property all carried off or destroyed. There was nothing left. We looked for the cattle, hogs, horses, poultry, and other property, but it was all gone; everything had been taken or destroyed; he lost everything.

Pass was not a married man; he had no children, brothers, sisters, or other relations that I know of. He was quite alone in the world. He had been here a great many years before the war of 1812. I understood that he came from Mexico originally.

*Cross-examined.*

I never saw any of the patriots or American troops on Pass's place before he abandoned it.

I do not know of my own knowledge that they ever were there; and all I know of his being driven off by the patriots, or leaving his place through fear of them, was from what he said and from general report. It was quite notorious, however, and well known here at that time, that most or all of the settlers in the country abandoned their places and fled to the city on the approach of the patriots, and Pass, among others; and I have no doubt it was so. I knew Mr. Ferreira, the father of the claimant, who is administrator of Pass. He was lost at sea a great many years ago, in the schooner Florida. He left only three children, all sons; and, at the time of his death, they were all small boys, not old enough to take care of themselves or look after his estate. I think the eldest was not then over eight or ten years old. I was not in any way related to Mr. Francis Pass, neither am I in any way related to Ferreira, the claimant, or his family. I have no interest whatever in this claim in any way or manner.

I do not know when the claimant first knew of this claim; the first time that I ever told him anything about it was about four or five years ago.

MARTIN CANOVAS.

Sworn and subscribed this 18th October, 1850, before me,

I. H. BRONSON,

*Judge and Commissioner, &c.*



FRANCIS P. FERREIRA, administrator, estate of Francis Pass, <i>vs.</i>	} WM. A. FORWARD, <i>Attorney.</i>
THE UNITED STATES, for losses of 1812 and 1813.	

Interrogatories to be propounded to John Suarez, witness to be examined under a commission for and on behalf of the claimants:

1st. How old are you; where do you reside; how long have you lived in Florida; were you in Florida in the years 1811, 1812, and 1813, or any of them, and which?

2d. Have you any knowledge of the operations of the American troops and patriots in East Florida during those years, or any of them, and which; what were your opportunities of deriving this knowledge; were you or not one of the individuals then known as patriots; if so, under whom did you serve; did the patriots and American troops act in connection; who commanded them?

3d. Were you acquainted with Francis Pass in those years; if so, where did he reside, and what business did he follow; were you ever at his plantation, or did you ever see any patriots or American troops upon his place?

4th. How near to the plantation of Pass were patriots or American troops stationed?

5th. Do you or not know whether the said Francis Pass sustained any losses in those years; if so, of what did those losses consist; by whom were they occasioned? State all you know on this subject to the best of your knowledge, information, and belief.

WM. A. FORWARD,  
*Solicitor for claimant.*

*Cross-interrogatories.*

1st. If you speak of losses suffered by Francis Pass, deceased, state how, when, and where they occurred, and all the particulars about them?

2d. If you say that Pass lost any property by means of the operations of the American troops in 1812 or 1813, state particularly what was the kind, quantity, and value of the property which he lost?

3d. Did you ever see the United States troops or patriots, or either, and which of them, take, use, carry away, injure, or destroy any of the property of Francis Pass in 1812 or 1813?

4th. Do you know of any other matter or thing in reference to this claim, and which may benefit the United States? If so, state it fully and particularly as though you had been specially interrogated thereto.

I. H. BRONSON,  
*Judge and commissioner, &c.*

JANUARY 28, 1851.

To George R. Fairbanks, A. M. Reid, or C. S. Emery, or either and each of them:

GENTLEMEN: You and each of you are hereby authorized and empowered to take the depositions of the witnesses named in the annexed interrogatories, in answer to said interrogatories and cross-interrogatories, in the case of the claim of the administrator of Francis Pass, deceased, at the request and expense of said claimants; and when taken you will seal up the same and send them, under your hand and seals, to the judge of the district court of the United States for the northern district of Florida, at St. Augustine.

Dated January 28, 1851.

I. H. BRONSON,  
*Judge and Commissioner.*

FRANCIS P. FERREIRA, administrator estate of Francis Pass, <i>vs.</i> THE UNITED STATES for losses of 1812 and 1813.	}
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The answer of John Suarez, a witness, produced, examined, and sworn, to the annexed interrogatories on behalf of the claimants.

1st. To the first direct interrogatory he says: I am fifty-five years of age; I reside at St. Augustine, Florida, where I have resided all my life; I was in Florida in the years 1811, 1812, and 1813.

2d. To the second direct interrogatory he says: I know that the American troops and patriots were in Florida during those years and acted in concert; that they broke up the settlers in the country, drove them off their places, carried off cattle, and depredated upon and destroyed the country; I was not a patriot, but served in the Spanish service.

3d. To the third direct interrogatory he says: I knew Francis Pass in those three years; he lived in a place called Sampson, about twenty miles from St. Augustine; he followed farming, and had a stock of cattle; I have been many times at his plantation both before the patriot war and afterwards; I never saw any patriots or American troops upon the place.

4th. To the fourth direct interrogatory he says: I do not know of my own knowledge how near to his plantation the patriots or American troops were stationed; I know they had a post at Hulbut's, one at Twelve-mile swamp, and one at Davis's creek; the one near to Davis's creek was in the range where Pass's cattle ranged, say about seven miles from Pass's place.

5th. To the fifth direct interrogatory he says: I know that the said Francis Pass sustained injuries and losses in those years; he lost his hogs, cattle, horses, crops, buildings, poultry, farming utensils—in fact he lost everything he had; he was forced to fly, and took nothing; I was on duty at the gate when he came in, and he brought nothing

with him; he was always afterwards a poor man, and never received anything; these losses were occasioned by the patriots. I heard Francis R. Sanchez, who was one of the patriots, afterwards say in my presence that he was with the patriots when they were on Pass's place, and that they took and destroyed his cattle, hogs, &c., and burnt his buildings; that they eat his cattle and hogs in the patriots' camp; this was after the war was over, in 1814; during the war no Spanish inhabitants went beyond the city limits.

his  
JOHN X SUAREZ.  
mark.

Sworn before me and subscribed, this 20th March, 1851.

GEO. R. FAIRBANKS,  
*Commissioner.*

1st. To the first cross-interrogatory he says: That he knows nothing more of his own knowledge than he has stated as derived from Francis R. Sanchez, who has been dead some five years; that he was himself on the place after the war was over, and found everything destroyed; neither cattle, horses, or hogs could be found.

2d. To the second cross-interrogatory he says: That he does not know particularly the number of cattle or hogs he had; he had a good stock of both, and butchered; I think he had three hands; I know that he had; he had sixteen or twenty acres of land planted; he had a house and out-houses, &c.

3d. To the third cross-interrogatory witness says: I did not see any of Pass's property, in 1812 or 1813, carried away or destroyed by the troops of the United States or patriots.

4th. To the fourth cross-interrogatory witness says: That he knows of nothing else in reference to this claim, or which could be of benefit to the United States if stated.

his  
JOHN X SUAREZ.  
mark.

Sworn and subscribed to before me, this 20th March, 1851.

GEO. R. FAIRBANKS,  
*Commissioner.*

Before the judges of the district court of the United States, for the northern district of Florida, at chambers.

St. AUGUSTINE, *August 2, 1851.*

In the matter of the claim of the admin- istrator of FRANCIS PASS, deceased,	}
<i>vs.</i>	
THE UNITED STATES, for the losses of 1812 and 1813.	

Present, W. A. Forward, attorney for claimants; G. W. Call, district attorney of the United States.

John M. Bowden, a witness on the part of the claimant, being produced, sworn, and examined, says:

I am about sixty years old, and now reside at Mandarin, in Duval county, Florida, on the east bank of the St. John's river; I have lived here all my life; was born and raised in East Florida; in the year 1811, 1812, and 1813, I was living in Mandarin, on the St. John's river, about fifteen miles above the present town of Jacksonville; I have knowledge of the operations of the American troops in East Florida in those years; I was at one time one of the patriots, so called, and served under McIntosh and Colonel Smith of the United States army; the patriots and American troops acted in connection; I was acquainted with Francis Pass, now deceased, in his lifetime; he resided on Sampson creek, about twenty miles north of St. Augustine, on the east side of Sampson creek, and about three miles from the King's road leading to Jacksonville; his place was directly on the road which now leads to New Switzerland, about five miles from the mouth of Sampson creek, where it empties into Julington.

The place is not occupied, and has not been for several years. The volunteers had a fort there during the Indian war, and one Orteguas has since occupied it for two or three years.

In 1812 and 1813 there were patriots and American troops stationed at Davis's creek, about five miles from Pass's place. Also at New Switzerland, (Faito's place,) about ten miles from Pass's. Also at Hulbut's place, four miles north of St. Augustine.

In passing from the camp at Hulbut's, or from Davis's creek to New Switzerland, the road led directly by or through Pass's place.

Pass had a small farm there, and kept stock, cattle, and hogs. His time was principally occupied in attending to his stock, which consisted of stock cattle, beef cattle, and hogs.

He had a large stock of cattle, and I suppose he must have had between five and six hundred head, and perhaps more, besides a good many hogs; and I saw three head of horses which he had.

He planted corn, potatoes, peas, and pumpkins. I think he had about twenty acres cleared, and principally cow-penned land which he planted.

He had three or four hands. His planting was merely to raise provisions for his own use. Stock raising was his main business. He planted there, in 1811, about twenty acres in all.

He had tolerable good log buildings, with a yard inclosed, and rail fence. At that time Mr. Pass was a man who was considered to be in good circumstances, "well to do" in the world, and a loyal Spanish subject.

His property was all destroyed by the patriots and American troops, in 1812. I know it because I saw it. His buildings were burned and place destroyed by the patriots and American troops.

There were some of the American troops there at the time. I was there at various times, and so was Colonel Fr. Roman Sanchez, but I was not there when the house was burned. At that time Pass had been driven off from his place, and was in St. Augustine.

His cattle were killed and driven off, and made beef of, at different times by the troops. His cattle were mostly driven off at first over

Davis's creek, and kept there by the troops at that station, and as they were wanted from time to time, they were sent for and driven into the camp of the patriots and American troops, at Hulbut's place, near St. Augustine. The hogs shared the same fate.

His corn crop of 1812 was planted, and just up when the troops first came on, and was all destroyed.

What remained on hand of the crop of the preceding year was taken by them, but I do not know how much there was on hand.

The patriots took his horses, and had them in the camp here before St. Augustine. They used them to drive his cattle with.

Pass never recovered any of his property, to my knowledge. He was a very poor man after the patriot war was over, and always remained so.

It was in March, 1812, that the patriots and American troops came into the country, and they remained here before St. Augustine until late in the fall. They occupied all the country east of the St. John's as far south as Matanzas or further.

They killed and destroyed all the cattle and hogs in the country, and took and destroyed all the property. When they left the country, there were no hogs or cattle left in the country east of the St. John's. They had killed and destroyed everything except a few, and when they left the country they drove away some with them. They were wasteful and extravagant in killing cattle, and frequently shot down and destroyed more than they wanted for immediate use. The object was to prevent them falling into the hands of the Spanish.

There were two stations on Davis's creek; one at which the regular American troops were stationed, and one where Lieutenant Stallings was stationed. That was at the head of boat navigation on Davis's creek, and there they had a block-house, and a large depot for provisions, flour, &c., which were landed there, and hauled across to the main camp before St. Augustine.

*Cross-examined by the Judge.*

The patriots and American troops came into the country east of the St. John's a few days after the taking of Fernandina, in March, 1812. The patriots crossed the river at Jacksonville, and marched through the country, and the American regular troops came up the river in gun-boats to Picolata, and crossed over from there, and both parties united at the camp before St. Augustine, at Hulbut's place, where they encamped together, all in one encampment; that is, one chain of sentinels inclosed the whole encampment; and they there remained for a number of months, and from this camp foraging parties were constantly sent out in all directions.

I was not with the patriots when they first came in, and cannot be certain whether any of the American troops came with them from Jacksonville to this place, but I think they all came by water to Picolata. It was about a week after they came on here that I joined them.

The way of it was this: A party of patriots came to my house and took me prisoner, and brought me to the camp at Hulbut's, before St. Augustine, and kept me there until I agreed to join them.

They agreed to protect my property if I would join them, (but they did not do it.) Many other of the inhabitants of the country living east of the St. John's, were taken prisoners and brought to the camp and compelled to join them, and some who were obstinate and would not join them were kept prisoners for a long time. After I joined the patriots, I remained with them at the camp here before St. Augustine, until about September, 1812, I think; and then I went out to the block-house, on Davis's creek, where Lieutenant Stallings was in command. I went there with a party of patriots, and we remained there some weeks or months until that camp was broken up, and then I went home. During the time we were in camp before St. Augustine, I was frequently out with scouting parties about the country, and sometimes at the station first mentioned, at Davis's creek; at these times I saw parties driving off Pass's cattle; I knew his cattle by his mark, and moreover, I saw them here at the camp, and also in charge of the patriots at the station at Davis's creek, and at Lieutenant Stallings's station. I cannot say how many I saw at any time, but I have seen parties driving them off more than once, and I suppose they got all of Pass's cattle, because they always took all they could find, and he had none left after the war was over. During the time I was in the patriot service, I was at Pass's place, with others, as much as four or five times. When I first went there the buildings and fences were all standing, and furniture in the house. Pass, however, had abandoned the place and gone into St. Augustine, but had apparently left everything there. I know he left some corn there of the crop of 1811, but I cannot say how much; he also left poultry and pigs there. When our parties went there they took and used whatever they could find. His household furniture consisted of such as is usually found in a log-house, bed and bedding, chairs, tables, cooking utensils, &c., &c., worth at least \$150, I should think.

I think it was about June, 1812, that the house was burned up, and then everything was destroyed that had not been stolen. I was not there when the house was burned, and don't know how it happened. I think I was there three or four times before the house was burned, after I joined the patriots. I do not remember that he had anything planted but corn and root potatoes. I think about 20 acres of corn, and about half acre of root potatoes. This, of course, was all destroyed. That land would produce at least 20 bushels of corn per acre. Corn was then worth \$1 per bushel; potatoes, 50 cents; stock cattle about \$5 per head; beef cattle, \$10; stock hogs about \$2 50 or \$3 a head. His hogs were all killed and used by the patriots and American troops, but I have no idea how many he had. I knew three of his horses which were taken and brought into camp; two horses and a mare. They were worth \$40 or \$50 each. I think more than one quarter of his stock were beef cattle. He was engaged in butchering and furnishing cattle for the St. Augustine market before the war. I was in the habit of being at his place frequently before the war, and knew about his business and property. I saw his cattle penned in the spring at one time; part of them, not all; and frequently saw them in the range. I lived about 14 miles from him. Pass was a married man, I believe, but his family did not stay there at all. I never saw

any of his family; he lived there all the time; he lived here in St. Augustine after the patriot war was over; he never returned to his place or attempted to occupy it.

In the patriot service I belonged to a company of which the captain was D. S. H. Miller. I do not remember the name of our lieutenant. We were attached to Colonel L. Ashley's regiment. I was in nowise related to Pass, and I have no interest in this claim in any way or manner; am not in anywise related to the administrator, (Mr. Ferreira.)

*Direct examination.*

I heard talk in camp about the burning of Pass's buildings by the patriots and American troops, and heard them say that they burned them. I think a part of Coree's company were along at the time it was done, and I believe Roman Sanchez was with them.

JOHN M. <sup>his</sup> BOWDEN.  
mark

Sworn and subscribed this 2d August, 1851, before me,

I. H. BRONSON,

*Judge and Com.*

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Extract from the testimony of George J. F. Clark, who was examined as a witness before the Hon. Robert R. Reid, judge, &c., in behalf of the claim of Francis D. Pons and Peter Pons against the United States, for losses in East Florida in 1812 and 1813, namely:

George J. F. Clark: Witness is near sixty years of age; he was in Fernandina in 1812 and 1813; he resided there, and had done so for some time previous.

He speaks of the origin of the revolution; he says that about two years before the breaking out of the same, General Mathews was employed on the frontier endeavoring to seduce the inhabitants to rebel and take the country for the United States; sometimes on the frontiers of East Florida, and sometimes on those of West Florida.

The condition of the country was most prosperous. Every man was making money hand over hand as fast as he could, and in consequence of the restrictive measures of the American government, the trade of the United States with all the world, except Spain, centered at Fernandina.

In consequence of the general prosperity, the overtures of General Mathews were resisted, and the governor became so much enraged at his want of success, that he resolved to visit Governor White and tempt him in St. Augustine. He prosecuted his journey as far as Atkinson's, on the St. John's, to whom he imparted his purpose; and Atkinson, who was an amiable man, dissuaded him; said he, "as sure as you open your mouth to White on the subject, you will die in chains in the Moro



Castle, and all the devils in hell can't save you." General Mathews retraced his steps the next day. Witness heard this story from Atkinson, who was a man of integrity and veracity. He is now dead.

The general at last, and after applying to every one else within his reach, addressed himself to John H. McIntosh, a wealthy man, and of good education, but not influential with the government or people. With him the general succeeded, and the patriot flag was first elevated on the 14th March, 1812, at Rose's bluff, on the south side of the St. Mary's river. So far was Mathews from succeeding in alluring the inhabitants to revolt, that he had said if five thousand Floridians, or even three, would join him, he could then go on and command in his service the United States forces in the neighborhood.

Some seven or eight came even from St. Mary's, among whom were the collector, Major Clark, a man whose name was Bogue, and McIntosh's overseer. About five Floridians, whose names witness does not remember, joined them at Rose's bluff, before mentioned.

The next day the flag was removed to Lower bluff, two miles below. The flag was a white field, with a figure of a soldier in blue charging bayonet, with the motto "*salus populi lex suprema*," but, after the flag and its legend had become the subject of some merriment, it was altered to read "*vox populi lex suprema*."

When the flag was planted at Lower bluff, the gun-boats fell down the river St. Mary's, and blockaded the harbor of Fernandina, and there came from the patriot camp at Lower bluff, about seven miles from town, a demand that Fernandina should surrender within one hour. Don J. Lopez, the commandant, replied that an hour was too short; he should send a reply, but probably the next day. Immediately a council of war was called and the inhabitants were convened; the commandant dispatched emissaries in various directions, to obtain information, and the inhabitants were employed during the night in throwing up works of defense. The site of an old fort, which stood upon the promontory, and in front of the city, was defended by cotton bags piled up as a rampart—sometimes the bales were three or four deep—and a few small cannon; and from this work the Spanish flag was flying on the morning of the 16th.

The American naval commander discovered these symptoms of resistance, and sent up five gun-boats, which were arranged around the work just mentioned; two gun-boats remained at the mouth of the harbor, and the eighth hoisted sail, having their commander on board, and, sailing up and down the harbor, signals were made and orders given by Commander Campbell. Guns were also fired from this vessel occasionally; and this state of things continued until ten o'clock in the day. When the fifth gun was fired, and an exchange of flag signals had taken place, the patriots, amounting to two hundred and seventy men, debarked from Lower bluff, and came down in seven or nine boats. They were distinctly seen approaching the city. There was much agitation. Several persons called from the shore to the nearest gun-boat, "keep off, or remain neutral until we decide the contest with the patriots." There was a general hurrah from the shore. The reply from the gun-boat was, "if you fire on them we will fire upon you." The authorities were then driven to consider what had



best be done. There were many minds; some were for fighting; some for surrender; some for one thing, some for another; all the while the cannon of the gun-boats, (carrying three apiece,) were pointed in the faces of the people, and the matches were lighted for the purpose of discharging them. At length there was a demand from the crowd collected around the commandant's house, he standing at the steps near the flag-staff, that the commandant should himself decide what should be done. He pondered for a moment, and then said, "we must surrender, resistance would be unavailing." After some little time, he asked, "who will take the flag of surrender?" witness said "I will, if you say so;" which being assented to, witness went out in a boat with a white flag to meet the patriots. Upon coming up with them, he told them that he was prepared to surrender the city and take down the Spanish flag. Accordingly, upon a signal from the witness, the flag was struck, witness returned to the city, and the patriots landed at Fernandina bluff, about a mile from the city. About an hour afterwards they entered the city, under the command of McIntosh. They took possession and raised the patriot flag. So soon as the Spanish flag was lowered, the squadron of gun-boats hauled off and swung at anchor in the stream.

On the next day, 17th, (St. Patrick's day,) Governor Mathews came over, and the American flag was elevated. On that day articles of capitulation, or a treaty, was signed by McIntosh, Mathews, and the Spanish commandant, and several officers on both sides. What was the purport of the instrument witness does not remember; but he knows it was something repugnant to the Spanish commandant's wishes, who protested, and said he was obliged to sign from necessity, and not from choice.

On the 18th or 19th, Colonel Smith came in with three companies, one of infantry, commanded by Captain Woodruff, and two of riflemen, commanded by Massias and Ridgeway. Captain Williams, of the marines, was with them. They pitched their tents within the city, there being no house-room for them.

As soon as the American flag was hoisted, the patriots and Governor Mathews disappeared; they went towards the St. John's, and after occupying the place for two or three days, the American troops obtained all the means of transportation they could procure, and set out, under a heavy shower of rain, also for the St. John's. The American gun-boats were withdrawn at the same time; some went into the St. John's river, and one was lying, for a considerable time, off St. Augustine. Captain Williams, with about twenty riflemen, remained in possession of Fernandina; he was in command about two months. After a short time, thirty militia men from the United States came over to relieve the riflemen, who went off to join their comrades in the country, leaving Captain Williams, a sergeant, and but two men with the militia just mentioned. Captain Williams was relieved by Captain Ridgeway, who, after some weeks, was relieved by Captain Massias. Williams became very popular with the inhabitants; he was mild, kind, and obliging; Ridgeway and Massias were more severe and less popular. Ridgeway allowed his militia men to do as they pleased; he was given to drink. Massias conducted himself with more propriety. The United States troops and patriots then pushed on for St. Augustine.

They constructed a block-house on Davis's creek, for the purpose of provisioning the army, and it was in maintaining a communication with this place that Captain Williams was killed. When the army, composed of the patriots and United States troops, sat down before St. Augustine, the artillery of the fort were desirous of testing their skill in gunnery, and fired at their flag. The first shot very nearly struck the staff, the second still nearer, and half buried a little drummer in the sand, from which he was extricated unhurt.

The American camp was then removed beyond the range of the shot from the fort. Williams was killed fighting bravely, on the night of the 14th September, 1812, and immediately afterwards the patriots and United States troops fell back upon the St. John's, where they remained until the 8th of May, when they left the country. About the 13th or 14th May, Fernandina was evacuated, and after this date the United States troops did not appear in Florida; the patriots remained for several years afterwards, and were more troublesome than ever.

A great many of the inhabitants joined the patriots on their way to St. Augustine. They had no other resources, but were obliged to do so from a just regard to the safety of their persons and property.

The inhabitants of Fernandina were considered prisoners of war, and remained so.

Many removed to Fernandina for safety with their property. These did not join the patriots. Many left the province until the troubles were over.

The people endeavored to get to St. Augustine or Amelia, where they supposed themselves safe. All the plantations in the interior were broken up. Those who brought slaves to Amelia were obliged to support them. Everything was extraordinarily high. The shipping departed when the town surrendered, and all business was paralyzed.

In July, (8,) Don Justo Lopez obtained permission and embarked with his few troops to St. Augustine. They had been prisoners of war from the surrender until this time.

The progress of the United States troops and patriots was marked by disorder and destruction of property, but they would not have committed these outrages but for the presence of the United States troops.

Witness was at the time acting as surveyor general of the province. He was the general agent of the government on the frontier—certifier of all cargoes of lumber at the custom-house.

Wheat flour was worth from \$7 to \$9 at that time; coffee, 25 cents per pound; firkin butter, 25 cents per pound; lard, 20 cents per pound. Corn was very high at that time, from \$1 50 to \$2 per bushel. The usual price for corn and peas throughout the country, in 1810-11, was \$1 in harvest time, \$1 50 in planting time; the medium would be nine bits. Candles were worth 20 cents per pound, soap 15 cents, rice \$4 per hundred.

The land on Amelia island would produce twenty bushels to the acre. The land on that island is good. Fifteen bushels would be a fair average product per acre for the land about St. Augustine, unless in small spots.

The average product would be from fifteen to twenty bushels per acre on the St. John's. The acre on Amelia would produce three

hundred bushels (the average) potatoes; on the St. John's the same, and two hundred in the neighborhood of St. Augustine. The plain immediately around St. Augustine was in a state of high cultivation at the time; beyond the fifteen hundred yards there were some farms, but the cultivation was not general. The herds of cattle numerous in 1810, 1811, and 1812, in the country on both sides of the St. John's, but particularly on the west and to the south. Stocks and droves were to be met with in every direction, but during the revolution they were much destroyed, and suffered also from neglect. About the close of the revolution, numbers of cattle were taken by the patriots to Trader's hill and sold for \$2 per head. Everybody had more or less of cattle. Papy, Solana, Huertus, Sanchez, and the house of John Forbes & Co., Arredondoes, and Palliciers were among the principal stockholders; but every one of any property owned cattle. The cattle on the west side of the St. John's were not considered so valuable as those to the south of St. Augustine. Stock cattle might have averaged from \$8 to \$10 per head; a milch cow and her calf were worth from \$20 to \$25.

After the revolution witness held the office of deputy governor of the northern and western divisions of Florida, and was a Spanish vice-consul in Georgia.

Negroes in the province belonged to three different classes: First, those employed in agriculture, whose hire was worth from \$8 to \$12 per month. Those employed in lumber getting from \$12 to \$16, excepting hewers, who were worth 50 per cent. more. Those engaged in shipping about \$20 or \$30 per month.

Many negroes were employed among the shipping at Fernandina, and a great many employed in the lumber business.

ST. AUGUSTINE, FLORIDA, *November, 1846.*

I, Isaac H. Bronson, late judge of the superior court of the district of East Florida, and now district judge of the United States district court in Florida, do hereby certify, that the foregoing extracts from the testimony of George J. F. Clark, as contained on the eleven pages immediately preceding this certificate, are faithfully and truly copied from the original papers now on file in my office, and in my charge and custody, in the case of the claim of Francis D. Pons and Peter Pons against the United States, for losses in East Florida in 1812 and 1813.

I. H. BRONSON, *Judge, &c.*

Extract from the testimony of Zephaniah Kingsley, who was examined as a witness before the honorable Robert R. Reid, judge of the superior court of the district of East Florida, in the claim of the assignee of Henry Yonge against the United States for losses in East Florida in 1812 and 1813, viz:

Z. Kingsley, witness                   \*                   \*                   \*                   \*                   \*                   \*  
\*                   \*                   \*                   \*                   \*                   \*                   \*  
witness is a little over sixty-seven years of age. In 1812, witness, when the troubles commenced, was living at Laurel Grove on St. John's river, fifty miles from Yonge's, but his intercourse with petitioner was frequent; he was often on his planta-

tion, especially in 1811, and had an opportunity of knowing the petitioner's pursuits and employments.

Witness is not related to the petitioner; has no interest direct or indirect in the claim.

In March, (about 15th March, as witness was informed,) the patriots appeared at Rose's bluff, and summoned Fernandina to surrender. They were accompanied by the United States gun-boats under Commodore Campbell. On the arrival before the town on the 16th, when their hostile movements were first made \* \* \* the gun-boats were in a line, not 200 yards from the fort, with their guns pointed against it, and the patriots under them soon approached the shore with their flag flying. Their ensign was a soldier charging bayonet, with a legend which witness does not remember; thinks it was "*vox populi lex Dei.*" The town surrendered. The original capitulation is in the hands of John Lee Williams.

When the commandant, Don Justo Lopez, presented his sword, the patriot colonel, Ashley, received it, and putting it on wore it ever after.

About a fortnight or more after the capture of Amelia, Colonel Smith arrived with the United States troops, and joined the patriots at St. Augustine.

The patriots had left Amelia on the 17th March, [and] arrived at Cow-ford on the 18th; on the 19th they lodged at Gunby's, and about [the] 20th or 21st arrived before St. Augustine. General Mathews had been with the patriots about a week before the capture of Amelia. Witness thinks he came with them to Fernandina. Mathews was with the patriots, and in their camp, from the very commencement of hostilities until he was superseded by Governor Mitchell, and he was generally known and recognized as the agent of the United States. He exhibited his authority from, and his correspondence with, the Government of the United States, and the general understanding was that the United States wanted the country, and had deputed General Mathews to subvert the government of Spain in this province. This general opinion was countenanced by the acts, deeds, and language of Governor Mathews.

He was a man of strict integrity, and a good soldier. There would have been no revolution if Mathews had not presented himself to the inhabitants clothed, as he said, and they believed, with ample power to take the country, and to afford protection to the inhabitants.

He exhibited letters and documents to support what he said, and public opinion was left without doubt, when Colonel Smith appeared with the United States troops, and formally received the country, as it was occupied, from the patriots.

The ceremony was this: A handsome oration was made by some patriot orator, offering the country to the United States; the patriots' flag was then taken down, and the United States colors elevated in its place, with a speech from Colonel Smith, accepting the country for the United States, and offering a pledge that he would keep and defend it.

In the beginning of July, 1812, the Spanish sent an expedition up the North river, under command of Miranda, and perhaps others, against Fort Mose, then occupied by the American troops, about three miles from St. Augustine.

The fort was taken and burned, and the Americans retreated about a mile to the west, and there remained near a fortnight.

On the 25th July the Indian war broke out; they had been stirred up by the Spanish government against the inhabitants of the St. John's, all of whom had been obliged to join the patriots' standard, and they were obliged in this wise: A few persons came to Ashley's, on the St. Mary's—Bogue and Clark and McIntosh and Matthews and the Longs, and others—and they were joined by Ashley, who was allured by threats and promises, perhaps both, to join the party.

They seemed to suppose Ashley might be useful to them. McIntosh was made director, and Ashley colonel under him; Governor Mathews directed the whole affair.

They issued a proclamation calling upon the inhabitants to join them, promising land to those who did so, and confiscation and banishment to those that refused.

Witness has seen two copies of the proclamation; does not know if there be one now extant.

Witness was taken prisoner by the patriots, with those who were with him, at Laurel Grove; and they were all taken to the patriot camp at Cow-ford, in the night of the 18th, about 2 o'clock in the morning.

There witness found Mathews, McIntosh, Clark, and others, who insisted that witness should join them; he refused, and requested to remain their prisoner; but they continued to persuade and expostulate until 10 o'clock in the day, when they began their march, and then he was told they would make no prisoners, and that he must either join them or submit to banishment or confiscation. They then produced the act of independence, which witness signed on condition that he should go home and be protected by them against the Indians. Witness went home, but they could not and did not protect him against the Indians. The inhabitants were certainly forced to join the patriot standard; they had no means of protecting themselves and their property, and were obliged, to avoid worse consequences, to make common cause with the invaders.

Some time in June, Mathews held a talk with the Indians at Forbes' store, at Picolata. He said the quarrel was between the white people, and their interference was not wanted, and he advised them to go home and be peaceable, threatening to do them great harm if they refused. Paine and twenty-seven chiefs were there; thinks Bowlegs was there, and hostile to the patriots.

The Indians received a present, by order of Mathews, from the store of Forbes, and they yielded assent, but they were not cordial. They stole witness's horse that night. The Indians remained quiet until they attacked the inhabitants of St. John's, on the 25th of July. The city of St. Augustine had been closely invested by the patriots and United States troops, and was on the point of famine. The soldiers were reduced to a pint of corn per day, and a surrender seemed inevitable, when, to avoid it, the Indians were let loose upon the settlements on the St. John's. The desired effect was produced; many of the patriots left the camp and flew to the protection of their families

and homes, and the invaders retreated to camp New Hope, on the St. John's; the siege was at an end, and St. Augustine relieved.

As Colonel Smith was falling back upon the St. John's, he was forced to obtain his provisions from that quarter; and Captain Williams, a meritorious American, who was escorting their supplies for the army, fell, for that time, into an ambuscade of provincial blacks and Indians, and was killed. The troops left the country in 1813, but plundering and ravage continued for a long time afterwards.

Everything was thrown into disorder; the houses all burned; the inhabitants flying or keeping up a feeble warfare against the Indians; fields were ravaged; the cattle destroyed or driven away; slaves were left to the mercy of the Indians, or to their own control or discretion. All these evils arose, undoubtedly, from the presence of the United States troops, an agent, without which, there would have been no patriot insurrection, and no Indian warfare.

The country was in a very flourishing state when the revolution commenced. The lumber and cotton trade made it so. It never was so prosperous before or since. It was left by the patriots a perfect desert.

The people of St. Augustine had more cattle than anybody else; the herds were numerous; Arredondo, Huertus, Sanchez, Solonee, were chief or principal owners; Hogan, Hartly, and Hendricks owned the most on the St. John's. Others in that quarter owned more moderate stocks; they were planters. Those first-named were principally graziers.

The land on the St. John's generally averaged 200 pounds of cotton to the acre, and from 15 to 25 bushels of corn; the ordinary price of corn on the river, \$1 25; the same, witness thinks, would be the product of the lands in the neighborhood of St. Augustine, and so in both places; 160 bushels potatoes to the acre; 50 cents a fair price for potatoes; a cow and calf would be in those times worth about \$16; hogs were dear, a hog of ordinary size would weigh 75 pounds, and pork in the market would bring 12 cents per pound; a good yoke of oxen, worth \$50 at least; beef cattle worth \$16 or \$18, fully \$18 per head; an ordinary cow \$14; poultry were high, a goose \$1, turkey \$1 50, fowls 75 cents, ducks 75 cents.

The expedition against Mosa was fired on by the Americans (United States troops) all the way up the creek as they approached the fort; a 24-pound shot passed through the fort, and the Americans retreated.

The patriots and United States troops acted in concert together at this juncture, and generally the retreat of the United States troops from Mosa was protected by a guard of patriots under Bogue. Colonel Smith sent the witness to obtain the guard, which he did.

The value of a good field hand \$500 to \$600; those accustomed to the lumber business, \$800.

ST. AUGUSTINE, FLORIDA, *November, 1846.*

I, Isaac H. Bronson, late judge of the superior court of the district of East Florida, and now judge of the United States district court for the district of Florida, do hereby certify, that the foregoing extracts from the testimony or deposition of Zephaniah Kingsley, in the claim

of the assignee of Henry Yonge, against the United States for losses in East Florida in 1812 and 1813, as the same are contained on the eight pages immediately preceding this certificate, are correctly and faithfully copied from the original papers of said claim now on file in my office, and in my charge and custody.

I. H. BRONSON,  
*Judge, &c.*

Copy of the testimony of Winslow Foster, who was examined as a witness before the Hon. Robert R. Reid, judge, &c., in the claim of Felicia Garvin, administrator of William Garvin, deceased, against the United States, for losses in East Florida, in 1812 and 1813, viz:

Captain Winslow Foster \* \* \* \* \* knew William Garvin in his lifetime, but does not know his widow, the petitioner in this case.

Knows nothing of the losses said to have been sustained by Garvin in the years 1812 and 1813.

At the time of the surrender of Fernandina, the witness was a sailing-master in the United States navy; he commanded gun-boat No. 62, and was present when the patriots took possession of the place.

On the 15th day of March, in the year 1812, a flotilla of gun-boats, five in number, descended the river St. Mary's; the movement was in consequence of the order of Commodore Hugh G. Campbell, post-captain of the navy of the United States, and commander on the southern station. On the morning of the 16th, the officers were summoned on board the commodore's gun-boat, commanded by Captain Sinclair, where the broad pennon was displayed.

They received their orders from the commodore in writing, and they were ordered to enter the harbor of Amelia, and to approach the battery of Fernandina as near as possible without incurring the danger of going aground.

They were to be prepared for difficulty, and to aid with their power the patriots under McIntosh, who were expected to make an attack on Fernandina that day. The orders of the commodore were obeyed. Five boats entered the harbor, they mounted six 32-pounders, one long 18, and six 9-pounders. The commodore remained in Cumberland sound, or Prince William's sound, at the mouth of St. Mary's river, within signal distance; and after making signals, the boats did approach the town of Fernandina in hostile attitude; the men were at quarters, the guns were pointed, tompions out, and matches were lighted; every thing was prepared for the expected emergency. Perceiving the intentions of the flotilla to be warlike, the Spanish authorities hauled down the Spanish flag, and sent it to the Americans; they refused to receive it, or to hold any communication with those that brought it. It was then taken back to the city, and hoisted again; after waiting four hours, at least, the patriots made their appearance; their force was about 250 men, and they approached in flat-boats through Bell's river. After some communications had taken place between the Spanish authorities and the patriots, the flag at the town was again lowered, and a



white flag went up, the device of which was a man charging bayonet, and the motto, "*vox populi suprema lex.*"

The patriots took possession, and the gun-boats immediately left the harbor, and sailed to Point Peter. The crews of the gun-boats averaged about 50 men to each boat; there must have been 16 guns on the shore; the battery was a temporary breast-work thrown up in haste, and composed of cotton bales. The patriot force was composed (with not more than one or two exceptions) of citizens of the United States.

The night before the invasion, witness was sent for arms and ammunition to Point Peter; Major Laval, of the cavalry, was then in command, in the absence of Colonel Smith, the military commander of the station. The major said, in reply to witness's application, that, though he had promised arms, &c., yet on his way from St. Mary's to camp he had reflected on the matter; he thought it a d—n rascally business, and advised witness to tell his commander to get his neck out of the halter as soon as possible.

Witness had understood that besides ammunition and arms, 60 men (United States troops) had been promised for the invasion.

Witness returned, and reported his ill-success to General Mathews, who was much disappointed, and greatly enraged.

After the affair was over, Commodore Campbell sent for the orders he had given on the occasion for the purpose of copying them; the orders were sent, and witness has never seen them since. When the boats first went into the harbor, the intention was certainly to use force, according to orders, in aid of the patriots against the Spaniards; they were required to cover the debarkation of the patriots, and to assist them until the Spanish flag was taken down, then to afford aid to the sufferers, &c., &c.; but after waiting for two hours or more, the commodore seemed to have reflected upon the subject more maturely, and made signals to the boats to withdraw.

The witness, young and enthusiastic at the time, and deeply interested in the affair as to his feelings, resolved to disobey the order conveyed by signal. He consulted with another officer in command with him before the battery, and told him he (John K. Grayson) might obey the order of the commodore if he pleased, but witness was resolved to remain where he was.

Grayson sailed with two boats from the harbor, and rejoined the commodore, by whom signals were repeated and urged by the firing of guns for the withdrawal of the boats.

Witness, however, retained still his position, and then a boat came to him from the commodore, with orders to hold no communication with the shore, and in no event to fire upon the town. These orders were entirely unknown to the authorities of the town, and to the patriots; but when the patriots landed, if any difficulty had occurred, had they met opposition from the Spaniards, the witness would not have fired, and could not, under his orders, have afforded that assistance which the flotilla had prepared to extend when first it entered the harbor. But the matches were lighted, and the guns presented to the last. When the boats approached the shore the Spanish commander sent to demand why they assumed so hostile an attitude; but no reply whatever was given. The order was to give no explanation.



There was a corporal's guard of six men on board each gun-boat.

Witness was often at Fernandina afterwards. He commanded in the harbor while Massias was commanding ashore; the United States flag was flying there.

Three of the guns were abreast of the battery; two were higher up, for the purpose of keeping several British vessels in check, which, it was supposed, might take part with the Spanish authorities.

Afterwards the witness was ordered to communicate with the army before St. Augustine.

For this purpose two gun-boats were to pass over the bar and up the North river, but if resisted by the Spanish authorities they were to return. The witness was taken sick and could not comply with the order, but the boat sailed and passed down the St. Augustine; they were fired on while sounding the bar from the fort, and bore up and returned. Gun-boats were constantly kept upon the coast, in the St. John's, and opposite to St. Augustine. A constant communication was kept up between the forces at Fernandina and the army in the interior.

Witness confidently believes that the losses, which were many and grievous, sustained at that period by the inhabitants of Florida, were occasioned by the presence of the United States troops within the province. Had the United States troops not been present, the patriots had never committed these outrages, and the losses had never occurred.

Witness has no doubt that the whole patriot movement was known to, and approved and encouraged by, General Mathews, and the patriots were emboldened to invade the country by his promises and assurances.

The patriot flag which witness has described was made under the direction of Colonel Isaacs, General Mathew's secretary.

The situation of the country (East and West Florida) was very prosperous at the time of the invasion; there was a thriving commerce going on; the lumber business was very profitable; many British vessels were loading, and there was much lumber prepared and preparing for market on the river St. Mary's. British vessels continued to load and take off lumber from Fernandina until war was declared in 1812. Lumber may have been gotten out in the interior after the patriots took possession of Fernandina, but the trade was certainly interrupted, and finally destroyed.

Such was the state of things that the tie between the master and slaves was wholly dissolved, unless the masters took their slaves to Fernandina and St. Augustine. Many planters fled with their negroes to Fernandina for protection and safety.

Witness thinks the agricultural condition of the province was highly prosperous; the cotton trade was flourishing; cotton brought a good price.

Witness knows of no wanton destruction of property on Amelia Island; on the contrary, Captain Massias exerted himself to protect private property.

The course of the patriots and the United States troops seemed to be identical; they coöperated closely, and the object seemed to be to reduce the country. The commandant was obliged, by the force of circum-

stances, to surrender the place. He seemed to be living in a very comfortable way. He and the other Spanish officers left Fernandina for St. Augustine on their parole. The United States officers in command of the post took possession of the commandant's house, and lived in it.

The patriots made their descent on Amelia Island with a firm conviction that they would be sustained by the United States gun-boats. Had they not been so convinced, they never would have made the attempt, which, when made, would not have succeeded but for the presence of the gun-boats; indeed, the witness thinks the invaders would have met with certain destruction but for the countenance of the United States gun-boats. The British vessels in the harbor, two of which were letters of marque, would have, as witness thinks, aided the Spaniards in putting down the rebellion but for the presence of the flotilla. One of the vessels had the Spanish flag flying at her mast-head. Witness means to say that by far the greater portion of the patriot invading force consisted of citizens of the United States.

ST. AUGUSTINE, EAST FLORIDA,  
*November, 1846.*

I hereby certify that the foregoing seven pages immediately preceding this certificate are a true copy of the testimony or deposition of Winslow Foster, in the claim of the administrator of William Garvin, deceased, against the United States for losses in East Florida in 1812 and 1813, as copied from the original papers on file in my office, and in my charge and custody.

I. H. BRONSON,  
*Late Judge of the Superior Court of East Florida.*

Before the judge of the supreme court of the district of East Florida,  
acting as commissioner, &c. June 29, 1843.

In the matter of the claim of the legal representatives of the estate of  
Lodowick Ashley, deceased, for losses in East Florida in 1812 and  
1813.

Archibald Clarke, of St. Mary's, Georgia, a witness on behalf of the claimants, being reproduced and sworn and examined, says: I know at the time of the commencement of the revolution in East Florida, in 1812, Lodowick Ashley was engaged in the lumber business, *i. e.* in cutting and getting out ranging timber on the St. Mary's river; I saw some in the woods and some drawn out to the landings, which was his timber, but how much he had in all I am unable to state. The time that I saw it was a day or two before the taking of Fernandina, and at same time I saw some of his men drawing out timber. I do not know what became of it, but I have reason to believe that it shared the fate of all the rest of the timber on the river.

I never heard of Ashley having sold his timber just about that time to any person.

I have no knowledge that he sold it. Joseph Higginbotham was at

that time a poor man, and was in the patriot service almost from the beginning, to the best of my recollection.

I know that Ashley at that time had cattle; he was in comfortable circumstances, and well to live; had eight or ten negroes, but how many cattle he had I am not able to say; I do not know whether he drove any of his cattle to Georgia or saved or secured them in any way, nor did I hear any such thing in those days.

I know that the troops marched upon him suddenly, some days before the taking of Fernandina. He then went with us to the taking of Fernandina, and remained in the patriot army almost constantly for many months.

He was generally in camp, though I think he, like others, went home on leave occasionally, perhaps two or three times.

I never heard of his removing any property or cattle to Georgia.

It was with great reluctance, and after much hesitation, that Ashley joined the expedition; and after being strongly persuaded and urged to it by General Mathews and others. General Mathews communicated to Ashley his plans and purpose, and represented that he was acting for the American government, and also showed him, as he did all of us, his credentials and instructions, and particularly the letter of the Secretary of State to himself and Colonel John McKee. General Mathews, to Ashley and others, always held out the idea that the United States would make good any loss or damage which they might sustain.

I do not remember whether any thing was said to Ashley about the consequences of remaining neutral, though much persuasion and encouragement was made use of to induce him to join.

This expedition, called the patriot war, was planned and got up by General Mathews in Georgia. It was there started, and myself and others joined in it under the idea and belief that Mathews was acting for and on the behalf of the government of the United States, and that he was truly representing the views and wishes of the government.

We were informed, and knew at the time, that the government relied much upon his discretion, and that the land and naval forces of the United States, in this part of the Union, were subject to his orders.

Fifty stand of arms, or about that number, (a large number at least,) were furnished by his orders from the United States arsenal, at Point Petre, to the men composing the patriot forces, on their first organization, and before the taking of Fernandina.

I was with the patriots under the direction of General Mathews, from the time of the first organization, previous to the taking of Fernandina, until the declaration of war in June, 1812; and then I left.

The regular troops of the United States followed the patriots as they advanced into the province, and took possession of the country. They marched in the rear of the patriots, and contributed much by their presence and countenance to the success of the patriots.

General Mathews accompanied the expedition and encamped with the patriots.

Colonel Smith, the commanding officer of the American troops, was under his orders.

As we marched into the province the inhabitants of the country were induced or compelled to join the patriot forces. They were given to understand that no neutrals could be left in the rear, and that if they did not join them they must quit the country.

I do not think that the patriot forces could have made any progress in subjugating or conquering East Florida if they had not been backed up and countenanced by the United States troops.

Taken before me this 29th June, 1843.

I. H. BRONSON,  
*Judge and Commissioner.*

ST. AUGUSTINE, FLORIDA,  
November, 1846.

I, Isaac H. Bronson, late judge of the superior court of East Florida, and now district judge of the United States district court in Florida, do hereby certify, that the foregoing and immediately preceding four pages contain a true copy of the deposition of Archibald Clarke in the above-mentioned case, as copied from the original on file in my office, and under my charge and custody.

I. H. BRONSON, *Judge, &c.*

This cause having been continued from time to time, until at an extra term of said court, held at the court-house in the city of St. Augustine on the 26th day of July, 1851, when the cause having been fully argued by the district attorney on behalf of the United States, and by Mr. Sherman and others in behalf of the petitioner, and having been fully considered by said judge, the following decree was pronounced, viz:

Before the judge of the district court of the United States for the northern district of Florida, at an extra term of said court, held at the court-house, in the city of St. Augustine, on the 26th day of July, 1851, and continued by adjournment on various days to the 30th day of August, in the year 1851.

In the matter of the claim of FRANCIS P. FERREIRA, administrator of Francis Pass, deceased,	} Decision and award.
<i>vs.</i>	
THE UNITED STATES, for losses in East Florida in 1812 and 1813.	

This claim is one of a class, arising under the last clause of the 9th article of the treaty with Spain, of the 22d February, 1819, and under the acts of Congress of 3d March, 1823, and 26th June, 1834, intended to carry into effect that clause of the treaty; which acts will be more particularly adverted to hereafter.

The case comes before me as judge of the United States district court

for the northern district of Florida, by virtue of the 6th section of an act of Congress of the 22d February, 1847, (vide pamphlet laws of 1847, p. 23,) which provides: "That any unfinished business or proceedings now remaining or pending before the judge of the superior court at St. Augustine, as a commissioner under and by virtue of the 'Act for the relief of certain inhabitants of East Florida,' approved 26th June, 1834, or under any other act granting special powers or imposing special duties upon said judge, be, and the same are hereby, transferred to the judge of the district court of the northern district of Florida, to be proceeded in, and finished or decided, in the same manner provided for by law; and the said district judge shall have, exercise, and possess, the same duties, powers, and rights, which have, by virtue of the act of 26th June, 1834, aforesaid, or otherwise, been possessed and exercised by the said judge of the superior court at St. Augustine, so far as may be necessary to enable the said district judge to determine and finish any matter, business, or proceedings, now pending and undetermined before the judge of the superior court aforesaid, by virtue of any such special act."

It is proper to remark, however, that this claim was not filed within the year prescribed by the act of 1834, above mentioned, but in virtue of a special act of Congress, approved 3d March, 1849, in favor of this and other claimants who had neglected to file their petition or claims within the time prescribed by the former act, and which act of 1849 authorizes and directs the judge of this district to receive and adjudicate this and certain other claims under the provisions of the act of Congress of 26th June, 1834. (Vide pamphlet laws of 1849, p. 148.)

It is also proper that I should state that this petition was filed before me and properly presented on the 28th February, 1850, and within one year from the passage of the act of 1849, above mentioned; and that the claimant has alleged in the petition, and proved to my satisfaction, reasonable cause for the petition not having been presented within the time prescribed by the act of 26th June, 1834, as will more fully appear by a reference to the petition and proofs hereto annexed.

The proofs having been completed in this case, the claim was submitted by Mr. Forward, of counsel for the claimant, upon the testimony and exhibits herewith reported, who insisted that the items of the claim as set forth in the petition were fully proved, and that the claimant was entitled to an award for the whole amount claimed, with interest. Mr. Sherman and Mr. Yulee, also as counsel for the claimant, appeared and argued the case on his behalf; and Mr. Call, district attorney of the United States for this district, also appeared on behalf of the United States and in opposition to the claim, and presented certain points, which he argued at length, and which, as well as the points and arguments of the claimant's counsel, will be more fully noticed hereafter.

The main features of this case are much like those of many others which have heretofore been adjudicated under the provisions of the 9th article of the treaty of 1819 with Spain, and the acts of Congress of 1823 and 1834, above mentioned.

I consider it well established, by the proofs in the case, that Pass was a Spanish subject and inhabitant of East Florida in 1812, and previously; and that, at the commencement of the patriot war or revo-

lution in East Florida, in March, 1812, he was, and had been for several years, living at a place then called Sampson, or Sampson creek, about twenty miles northwest of St. Augustine, where he was engaged principally as a stock-grower, or in raising, butchering, and selling cattle for the St. Augustine market; that he had from five to seven hundred head of stock and beef-cattle, which ranged in the vicinity of Sampson creek; and that he also had three or four horses, a stock of hogs and poultry; and that he had cleared and in cultivation about twenty acres of cow-penned land, on which he raised corn, potatoes, &c., or such provisions as were necessary for his own use; and that he had a log-house, and such furniture, tools, implements, &c., as were necessary for such an establishment.

That, on the invasion of the country by the patriots and American troops in March, 1812, at the time they laid siege to St. Augustine, he, like other inhabitants of the country, was obliged to abandon his place of residence, and his property there and in that vicinity, and take refuge in St. Augustine; and that, during the time that the American troops and patriots remained in the province, and between the 17th March, 1812, and 10th May, 1813, (when the United States troops finally evacuated the province,) his place was frequently visited by parties of patriots and American troops; that his cattle and hogs were driven off and used by them; that his horses were also taken, his growing crops of corn and potatoes of that year destroyed, his house burned, and everything on his place plundered or destroyed.

The fact that he suffered these losses and injuries by the operations of the American troops in East Florida, and that he was, from being in good and comfortable circumstances, reduced to a state of ruin and beggary in consequence thereof, and the particular amount and extent of the losses, will more fully appear by the evidence in the case; and without detailing it more minutely, but referring to the depositions accompanying this decision and award, I proceed to state that I consider the following items or allowances sustained by the proofs in the case; premising, however, that in this, as in other cases, in estimating the value of property at that period, I am governed not alone by the proofs in this particular case, but the general testimony of many intelligent witnesses in a great many cases of the like kind, heretofore decided and reported to the Secretary of the Treasury, showing the general market value of corn, cattle, hogs, horses, and other property, in this portion of the province of East Florida at that period.

I allow, then—

For loss of crops of 1812.....	\$350 00
For loss of corn on hand, of the crop of 1811, say one hundred bushels, at \$1.....	100 00
Two horses and one mare, at \$40 each.....	120 00
Hogs, say one hundred and fifty head, at \$2 50.....	375 00
Beef cattle, say four hundred head, at \$10.....	4,000 00
Stock cattle, say two hundred head, at \$5.....	1,000 00
Household furniture and plantation tools.....	110 00
Poultry.....	25 00
	<hr/>
	6,080 00

Interest on this amount, at five per cent. per annum, from the 10th May, 1813, to the 26th June, 1835.....	\$6,726 83
Making, in all.....	<u>12,806 83</u>

I do, therefore, award the above amount in favor of the claimant, and adjudge and decide that the United States pay to the said Francis P. Ferreira, as administrator of Francis Pass, deceased, the aforesaid sum of \$12,806 83, in satisfaction of the losses and injuries suffered and sustained by the said Francis Pass, deceased, in his lifetime, and in the years 1812 and 1813, by the operations of the American troops in East Florida in those years.

In respect to the interest which I have allowed in the above estimate, as a part of the damages for the injuries in question, or as a means of measuring the extent of the claimant's damage for the loss of the use of his property, I would remark that it is substantially the same allowance which has always been made by me in these cases, and also by my predecessor, Judge Reid, though hitherto, the interest has not been computed and added to the principal sum, or value of the property, but, nevertheless, has been as distinctly awarded, and made a component part of the award, or intended to be so, as in this case.

In some few of the first cases of these claims which were adjudicated by me, (perhaps two or three,) I awarded "interest according to the usage which has heretofore prevailed in the adjustment of these claims."

This was in 1840, and immediately after I was first appointed judge of the late territorial superior court of the district of East Florida. In a short time, however, I learned that the Secretary of the Treasury had, in all cases, declined to pay the interest so awarded; which fact induced me to examine the point with more carefulness, and to endeavor to ascertain, to my own satisfaction, at least, whether interest should be allowed as a part of the damages. My investigations then, as well as subsequently, resulted in a conviction of the entire correctness and justness of the allowance, and hence I continued to allow it, and have always awarded it as a part of the damages in every case decided since that time; deeming it my duty to make such allowances, and to fix the amount of damages at such sum as I deemed just and right, without regard to any opinion which the Secretary of the Treasury might entertain, or any decisions which he might make. For, although the laws of Congress required me to report my decisions or awards, when in favor of the claimants, to the Secretary of the Treasury, in order that he should pay the amount thereof, "if he deemed them just and equitable, within the provisions of the treaty," yet I never for a moment supposed that it was the intent of the act of Congress to make the Secretary an appellate tribunal of such a character that his decisions would be binding upon me, and control my action and opinions; and, although I have always been disposed to yield to them all due regard and consideration as of right belong to the opinions of a high public functionary, yet I have ever considered that I had no right to yield up that independent action which the law required of me, or to sacrifice my own convictions of right and justice in deference to the Secretary's



opinion. The investigations above mentioned, however, induced me to think that the interest ought to be limited within certain periods, namely, from 10th May, 1813, when the American troops evacuated the country, to the 26th June, 1835; the latter being the period within which, by the law of June, 1834, the claimants were authorized and required to file their petitions, and present their claims for adjudication.

The reason so frequently given for the alleged rule that the government does not pay interest, namely, because it is always ready and willing to pay all just claims when properly presented, had its influence with me in adopting this rule, (a reason, by the way, which, however correct in theory, may not be, and certainly is not always so, in fact, and, like other general rules, is subject to many exceptions.)

Previous to the act of June 26, 1834, there was no mode by which these claimants could approach the treasury and seek the payment of their claims, Secretary Rush having decided that the injuries of 1812 and 1813 were not within the provisions of the treaty, or the law of March 3, 1823.

The law of 1834, therefore, first opened the door by which they could present these cases, and make the proper proofs to obtain payment; and by this law they were required to file their claims before the judge within one year from the passage of that act, namely, by the 26th June, 1835. This was, virtually, a tender of payment to all who would present their claims to the judge, make the necessary proofs, and obtain his award. This they were equitably bound to do with all reasonable diligence; and I considered that, allowing them one year to accomplish this was enough, at least, to exonerate the United States from paying interest after that time, if, from their own default or negligence, they did not see fit to prosecute their claims, and obtain the decision of the judge within that period. In regard to the period at which interest should commence, it was not always, or even often, easy to fix the precise day of the losses or injuries; they generally occurred at different times, running through a period of weeks or months, but all between March, 1812, when the American troops first entered the province, and May 10, 1813, when they finally evacuated it; hence, I have assumed the 10th May, 1813, as the day from which interest, as part of the damages, should commence to run.

Acting upon these principles, I have, as before stated, uniformly allowed interest in the manner above stated, intending it as a component part of the amount of damages awarded in each case. The number of cases thus adjudicated by me is in all about one hundred, and running through a series of years from July, 1840, up to the present time. The rate of interest allowed, (5 per cent.,) it is understood, was the prevailing or legal rate of interest in East Florida at that period.

The present is the first case wherein the government of the United States, as well as the claimant, has been represented by counsel before me, and wherein this question of interest has been fully discussed.

The district attorney for the northern district of Florida, under instructions from the proper executive department at Washington, has appeared before me to represent the interests of the United States in this and other cases; and Mr. Forward, Mr. Sherman, and Mr. Yulee



as counsel for claimant; and, at the solicitation of both parties, an extra term of the court was ordered, to the end that they might present their views in this and other cases before me in open court. They have done so accordingly, not only on this question in regard to interest, but also on other points, which will be hereafter more particularly noticed; and besides the very able and elaborate arguments and briefs submitted to me by the gentlemen above named, at the close of the argument, Judge Douglas likewise submitted a copy of the written argument of Mr. Tallmadge on the same question, addressed to the Secretary of the Treasury in September, 1843, as well as a copy of his own letter to the Secretary of the Treasury of the 17th September, 1847.

I have already remarked, that my opinion of the justice and propriety of allowing interest had been formed after the most considerate examination; but it is at least due to the very able and elaborate expositions of the question which have taken place before me in this case, to say that that opinion has been strengthened, and the correctness of it verified, in a manner so perfect and satisfactory, that no room is left for doubt in my mind. And in view, also, of the fact that my awards for interest, as part of the damages in these cases, amount in the aggregate to more than half a million of dollars, I deem this a fitting and proper occasion to explain, at length, the grounds and reasons of these allowances, and to justify this item of my decrees against the government.

In order, however, to a right and proper understanding of this question in all its bearings, it is necessary to recur somewhat particularly to the history of these claims, and to the events which led to the "injuries" complained of by the claimants, and to show the character of them; and, in doing so, I refer not only to facts which have been proved by the depositions of many credible witnesses, in various of these claims which have been reported to the Treasury Department, but to the official correspondence and documentary history of that period.

For some time previous to 1812, the United States had looked to the acquisition of the provinces of East and West Florida as the only probable means of obtaining any indemnity from Spain for the large sums which she admitted to be due from her for spoliations and depredations upon our commerce, and for suppression of the right of deposit at New Orleans. Besides this, too, the geographical position of the Floridas was such that their possession had become a matter of the first importance to the safety of the United States; and the possibility of their passing into the hands of Great Britain, or any other foreign power, was looked to with great jealousy and distrust, and as a measure endangering the prosperity and best interests of this republic.

These circumstances led to the passage of the joint resolution and secret act of Congress of the 15th January, 1811, (vide Stat. at Large, vol. 3, pages 471 and 472,) by the latter of which the President was authorized to take possession of the Floridas, "in case any arrangement has been or shall be made with the local authority of said territory for delivering up the possession of the same, or any part thereof, to the United States, or in the event of any attempt to occupy the said terri-

tory, or any part thereof, by any foreign government." And for that purpose the President was authorized by the act to employ any part of the naval or military force of the United States, and one hundred thousand dollars appropriated to defray expenses, &c. Under this act, General George Mathews and Colonel John McKee were appointed by the President to act as agents or commissioners on behalf of the United States, with secret instructions "to repair to that quarter with all possible expedition," for the purpose of carrying out the intentions of the act, and, if necessary, to call to their aid the naval and military forces of the United States in that quarter of the Union, the commanders of which had been instructed to render obedience to their orders. (Vide Letters of Instruction from State Department in American State Papers, vol. 3, Foreign Relations, page 571.) It does not appear that Colonel McKee ever accepted the trust, or acted under it; but General Mathews immediately repaired to the Florida frontier, and took up his residence at St. Mary's. He very soon learned, however, that no voluntary surrender of this province from the "*local authorities*" could be expected; that the governor of East Florida was most loyal and faithful to his king, and could not be tampered with or approached with impunity; nor was there any movement or indication of an attempt, on the part of Great Britain or any foreign power, which would justify the forcible seizure or possession of the province under the second contingency mentioned in the act of Congress. Under these circumstances, and actuated apparently by a mistaken zeal to do something, and to get possession of East Florida at all events, he set about fomenting a rebellion, or revolution, in the province, and thereby creating a "*local authority*," who would surrender the province to the United States, and put it in their possession. And this, too, was no easy task; for there was no well-grounded cause of complaint on the part of the inhabitants against the provincial government of Spain in this province, and no grinding oppressions which were at all provocative of insurrection. On the contrary, the province was in a state of high prosperity, and, as a general rule, the people were contented and happy. The culture of sea-island cotton, the staple of the province, was particularly profitable, the average price being fifty cents per pound. Timber, also, which the government allowed its subjects to cut from the public domain, free of charge, bore high prices, and a steady and increasing demand for it absorbed all the surplus labor of the province. The town of Fernandina, on Amelia Island, was a kind of neutral or free port, at which a large and lucrative trade was carried on with all nations; and, if left to themselves, it cannot be presumed that revolution or insurrection would have been thought of by the inhabitants or Spanish subjects of East Florida. General Mathews, however, soon succeeded in conveying the impression, not only that he was the accredited agent of the United States government, and, as such, authorized to take possession of East Florida, but that the United States were determined to obtain possession of the province at all events; and, using both persuasion and menace, it is manifest enough that he induced those who first engaged in the rebellion as leaders, to believe that the province would soon pass into the hands of our government; and that, if they aided in the outset to produce this desirable result, their services

would be suitably remembered and rewarded; while, on the contrary, if they interposed obstacles to the measure, and refused to embark in the enterprise, they would incur the displeasure of the government of the United States, and might fare the worse for it whenever Florida should be incorporated into the Union. It should be borne in mind, too, that these considerations were addressed to the frontier inhabitants in the northern part of the province, who were mostly men who had been born and bred in the States, under a republican form of government, and who had moved from the States into Florida, and become Spanish subjects, but who, of course, retained their prejudices for the free institutions of this country. The result was, that, by these influences and considerations, and by the promise of arms from the United States arsenals, and the aid of the army and navy of the United States—and, above all, by a promise from General Mathews, that, as soon as they succeeded, and established a temporary government, he would receive from them a cession of the province in behalf of the United States, and with the aid of the naval and military forces of the United States he would take possession of and defend it—an insurrection or rebellion was finally organized, and a party of men, supplied in part with arms from the United States arsenal at Point Peter, assembled at Rose's bluff, a point on the Florida side of the St. Mary's river, a short distance from the town of St. Mary's, about the 14th March, 1812, and then raised the patriot flag, or standard of revolt, against the provincial government of East Florida; and having selected temporary officers and rulers, under the immediate superintendence of General Mathews himself, who was present in person, they finally moved down to attack the town of Fernandina, after having had some negotiations with the Spanish commandant, and trying in vain to induce him to surrender it. Some accounts state the number of this body of men at three hundred and fifty-seven; other accounts at two hundred and fifty; but all agree that only a small portion of them were Spanish subjects, or persons residing in Florida—probably not over fifty; the remainder were adventurers from Georgia, or the adjoining States, among whom probably were many worthy men, who, acting under the influence and representations of General Mathews, no doubt believed that they were acting in accordance with the wishes of the United States government. (Vide the testimony of Archibald Clark, and others, annexed to this case.)

Some witnesses say that there were not more than four or five Spanish subjects among the so-called patriot forces that made the descent upon Fernandina, and to whom the town finally surrendered, and that the remainder of the patriot army was made up of volunteers from the United States.

This movement took place on the 16th March, 1812, on the morning of which day several of the United States gun-boats, from the flotilla under the command of Commodore Campbell, ranged themselves in front of the town, in hostile attitude, with guns loaded, and matches lighted, apparently to cover the landing of the patriot troops, and did cover their debarkation; whereupon the Spanish commandant, seeing that the insurgents were, as he supposed, sustained by the United States forces, surrendered the town to the patriots, who took possession,

and raised the patriot flag. During the next day, however, a detachment of United States troops was brought over from Point Peter, and the newly-constituted patriot government surrendered the town to General Mathews, as agent of the United States government, who took formal possession, in the name and on behalf of the United States, and promised to defend and protect the country; and the patriot flag was then struck, the United States flag run up, and the town occupied by the United States regular soldiers.

Within two or three days, the patriots, accompanied by Colonel Smith's regiment of regular troops, or some part of it, and volunteer troops from Georgia, commenced their march towards St. Augustine, to lay siege to that place. Some of the United States regular troops, however, went in gun-boats by the way of the St. John's, and up that river as far as Picolata, and marched across from there, and effected a junction with the main body before St. Augustine.

On the march through the country, the patriot troops were generally a little in advance of the American forces. They would take possession of the country in form, run up the patriot flag, and then, as the "local authority" of the country, surrender it to the United States agent and troops, who would receive possession in form, whereupon the patriot flag was hauled down, and the United States flag substituted. In this way they proceeded, without opposition, to the walls of the city of St. Augustine, and laid siege to that place in the latter part of March, 1812, the United States agent (General Mathews) usually marching and camping with the patriot leaders.

It is worthy of remark, however, that all the witnesses who have spoken of these transactions concur in expressing the opinion that, but for the aid, countenance, and protection of the United States forces, these patriots, so called, could have made no progress whatever; that not only would their efforts at overturning the provincial government have been entirely abortive in the outset, but that they could not, at any time during the insurrection, have maintained themselves or their position in the country for a week, if unaided by the American troops.

In the mean time, during the march through the country to St. Augustine, every effort was made to induce the inhabitants of the country, both by persuasions and threats to join this invading army, or take part with the patriots, declaring that they would leave no neutrals in the rear, that those who would not join must leave the country; hinting at confiscation, and promising protection of person and property to those who would join them. Scouting parties were sent out, and many of the most influential and respectable inhabitants brought as prisoners to the American camp, and kept under close surveillance until they would consent to join the cause.

The approach of this "horde" towards St. Augustine spread universal panic and alarm. The Spanish governor sent out into the country, warning all the loyal inhabitants to come in and aid in the defense of the city; and many, either in obedience to the order, or from motives of self-protection, fled from their places of residence in the country, and took refuge in the city, which was immediately closely besieged by the American and patriot forces, and the whole country east and south of

the St. John's river, as well as north of it, was left completely exposed, and entirely at the mercy of these invaders.

The difficulty of obtaining supplies for such a force led them at once to look to the resources of the country; and the large droves of cattle with which the country then abounded were immediately and unhesitatingly seized upon to relieve their necessities; and foraging parties, consisting both of regular troops and patriots, were sent out in all directions to collect cattle and other means of subsistence for the army. The foraging parties most generally consisted of the patriot or volunteer troops, sometimes under the command of a regular officer, but the fruits of their expeditions were usually shared by the American and patriot troops indiscriminately. The cattle which they drove into camp, or collected and retained at the posts and stations in the country, to be used from time to time as they were wanted, were used by the regulars as well as the volunteer troops and patriots.

All accounts and witnesses concur in stating that the American troops and patriots acted in close concert and alliance; that they marched together, camped together, foraged together, and fought together; and that the operations and presence of the American troops sustained the patriots.

Besides the camp of the American and patriot troops before St. Augustine, there were also, from time to time, several other camps and stations about the country occupied by the United States troops or volunteers and patriots, from whence marauding and foraging parties were constantly going forth; and in the course of the summer and fall, almost every plantation and farm had been visited and plundered. Most of them had been abandoned by their owners; but whether abandoned or not, the foraging parties usually helped themselves to what they wanted or could find. The corn on hand in the corn-houses of the previous year's crop was eagerly sought for, and soon used up; the fences thrown down, and the growing crops exposed to destruction, as well as used or fed upon by their horses; movable property of every description plundered or destroyed, and buildings and fences burned, sometimes from design, (especially when the owners were particularly loyal to the Spanish government,) and often by accident, from camp fires, or negligence in occupying the buildings; and the cattle and hogs in the ranges killed or driven off to the camps of the invading army. And this state of things continued, but growing daily worse and worse, until the American troops were finally withdrawn from the province, in May, 1813.

During this time, however, and before the evacuation of the province, other American troops came into it besides those which have already been mentioned as having made the first incursion. Some small parties or companies of regulars or volunteers joined the forces before St. Augustine; and in the summer or fall of 1812, Colonel Newnan entered the province with a battalion or detachment of volunteers, and after remaining a short time on the St. John's river, made an expedition into the interior against the Seminole Indians; and in the spring of 1813, I think, a battalion of Tennessee volunteers, under Colonel Williams came into the province, and acted under or in concert with Colonel Smith. And, if I mistake not, this was the same gentleman

who, in offering to the government to raise a corps of volunteers for service on the southern frontier, pledged himself that none of them should "entertain any constitutional scruples about boundaries." Whether any of the injuries in question were occasioned by the operations of these troops, I do not now remember, but certainly some were by Newnan's corps.

A detail of some of the more revolting instances of robbery and plunder, and wanton destruction on the one hand, that occurred during this period, or of individual cases of hardship, ruin, and beggary on the other, is hardly called for, and perhaps not proper in this general statement, though they might tend much to illustrate the general character of the injuries of that period. Suffice it to say, that before or when the United States troops finally evacuated the country, the whole inhabited part of the province was in a state of utter desolation and ruin. Almost every building outside of the walls of St. Augustine was burned or destroyed; farms and plantations laid waste; cattle, horses, and hogs driven off or killed, and movable property plundered or destroyed; and in many instances slaves dispersed or abducted. So far as the destruction of property of every kind was concerned, the desolation of the Carnatic by Hyder Ali was not more terrible and complete.

It is but proper to observe, however, that as soon as the United States Government was officially made acquainted with these proceedings, and with the operations of General Mathews and the United States troops, they promptly disavowed the act, revoked General Mathews's powers, and appointed Governor Mitchell, then governor of Georgia, as the agent of the United States in place of General Mathews, with instructions to withdraw the American troops, and "to restore back to the Spanish authorities Amelia Island and such other posts of East Florida as had been thus taken from them." (Vide letter of Mr. Monroe, then Secretary of State, to Governor Mitchell, of 10th April, 1812, American State Papers, Foreign Affairs, vol. 3, p. 571.) In this letter, Mr. Monroe, after alluding to the fact that the troops of the United States had been used to dispossess the Spanish authority by force, says: "I forbear to dwell on the details of this transaction, because it is too painful to recite them." And in the course of this letter of instructions it will be observed, that Governor Mitchell is especially directed to take care of the interests of those people who had acted with General Mathews, and been engaged with him in taking possession of the province, and to secure them against the resentments of the Spanish authorities, inasmuch as it was supposed at Washington (and very correctly, too) that they had placed much reliance on the countenance and support of the United States Government; and on this point Governor Mitchell is directed to come to a full understanding with the Spanish governor, and "not fail to obtain from him the most satisfactory assurance respecting it." This point, as is well known, and also some others, led to much negotiation between the Spanish government and General Mitchell, and delayed the evacuation of the province; and the American troops were not withdrawn, nor was the province finally evacuated or surrendered, until May, 1813, when General Pinckney was finally authorized, as the agent and military commander of the United States in this part of the Union, to

withdraw the troops, and surrender or deliver up the province to the Spanish governor. In the mean time the siege of St. Augustine had been raised, and the United States troops had fallen back to camp New Hope, on the St. John's, and other posts in the interior.

In this narrative of events which led to the losses or "injuries" in question, I have no doubt omitted many details which might make it more perfect, and perhaps add much to the general history of these transactions, but my aim has been only to relate so much as may be necessary to show clearly and correctly the character of the injuries complained of, and how and in what manner they occurred, with a view to a more perfect and full understanding of the nature and extent of the assumed obligation of the United States to make satisfaction for them.

For a more full history of these transactions, I refer to the corresponding of the third volume of the American State Papers, Foreign Relations, between Mr. Monroe and Mr. Foster, at pages 543, 544, and 545, vol. 3; also to the documents communicated by the President to the House of Representatives on the 1st of July, 1812, at page 571, &c., of same volume of American State Papers, consisting of the instructions to General Mathews and Colonel McKee, Mr. Monroe's letter of recall to General Mathews, and also his letter of instructions to Governor Mitchell. There are also on file in my office duly certified copies of sundry letters and documents which were found on file in the office of the Spanish archives at this place, consisting of the official correspondence between the American agent and officers and the patriot leaders on the one hand, and the Spanish officials on the other hand, between the 14th March, 1812, and the 10th May, 1813. These are numbered from 1 to 42 inclusive, and were furnished to Judge Reid, my predecessor, in September, 1834, and placed on file with the other papers relating to these claims, and I have always supposed that he transmitted a copy to the Treasury Department. Having no positive knowledge, however, that that fact is so, I now take occasion to furnish copies of these documents, which will be transmitted herewith.

The depositions of George J. F. Clarke, Winslow Foster, Zephaniah Kingsley, and Archibald Clarke, annexed to this case, as well as many others already reported to the Secretary of the Treasury, give many important details in regard to the general history of this period.

It is with no pleasure that I have narrated these transactions, or that I call attention to any further details, which I fear would only tend to deepen their hue or render them less excusable. It is an episode in the general history of the nation, which, as an American citizen, I could have wished might remain unwritten. And although I feel gratified to observe that the United States government promptly disavowed the proceeding, and endeavored at once to retrace their steps, and to remedy the wrong, so far as they could with due regard to the safety and rights of those compromised by the extraordinary course which had been taken by their agents and officers, yet they could not fully wipe out the stain, or do away the wrong, which had been perpetrated, towards the peaceable and unoffending subjects of a nation with whom we were at peace.

These, then, are the "injuries" for which the claimants in this and



other cases seek satisfaction from the United States. And I will now proceed to the other grounds upon which that claim rests, occurring subsequent to events above related, and growing out of the treaty and the laws already referred to.

Against these proceedings Spain presented her most indignant remonstrances, which in her then weak and imbecile condition was all that she could do, except to claim satisfaction for the injuries which her subjects had been subjected to; but finally, in 1819, when the treaty of amity, limits, and settlement, of the 22d February, of that year, was entered into, (by which the Floridas were ceded to the United States, and the very people who had been thus injured and plundered were transferred to the jurisdiction of the United States,) a clause was inserted in the ninth article of that treaty to provide for these injuries, and to make satisfaction for them, which is as follows: "The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida."

After the final ratification of the treaty, and in March, 1823, an act was passed by Congress to carry into effect this ninth article of the treaty, which provides, in substance, that the judge of the superior court at St. Augustine shall receive and adjust these claims of the inhabitants of East Florida, or their representatives "agreeably to the provisions of the ninth article of the treaty." And in the second section it is provided, "that in all cases in which the judge shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be by the said judge reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable, within the provisions of the treaty, shall pay the amount thereof to the person or persons in whose favor the same is adjudged, out of any money in the treasury not otherwise appropriated." (See Stat. at Large, volume 3, page 768.)

Under this law, the judge of the superior court of St. Augustine proceeded to take cognizance of the claims filed before him, some of which were for injuries suffered by inhabitants of Amelia Island in 1818, and some for the injuries sustained by the operations of the American troops in this patriot war of 1812 and 1813. But upon reporting his decisions to the Secretary of the Treasury, Mr. Rush (who was then at the head of the Treasury Department) decided that the losses and injuries of 1812 and 1813 did not come within the provisions of the above clause of the ninth article of the treaty; that that clause only related to the "latest" or "last" operations of the American army in Florida. And that "late" (a word, by the way, not found in the Spanish version of the treaty) meant (in East Florida) only the operations of the American troops on Amelia Island in 1818, and covered only a few unimportant losses and injuries occasioned thereby. Application was immediately made to Congress by the inhabitants of East Florida for relief against this erroneous construction of the treaty and law of 1823. And after years of effort and weary delay, an act for their relief was finally passed (6 volume Stat. at Large, page 596) extending the authority of the act of 3d March, 1823, to the losses and

injuries of 1812 and 1813. This act, approved 26th June, 1834, provides that "the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the treasury not otherwise appropriated, the amount awarded by the judge of the superior court at St. Augustine, in the Territory of Florida, under the authority of the one hundred and sixty-first chapter of the acts of the Seventeenth Congress, approved third March, one thousand, eight hundred and twenty-three, for losses occasioned in East Florida by the troops in the service of the United States, in the year one thousand eight hundred and twelve and one thousand eight hundred and thirteen, in all cases where the decision of the said judge shall be deemed by the Secretary of the Treasury to be just: *Provided*, That no award be paid, except in the case of those who at the time of suffering the loss were actual subjects of the Spanish government: *And provided also*, That no award be paid for depredations committed in East Florida previous to the entrance into that province of the agent of the troops of the United States.

"SEC. 2. *And be it further enacted*, That the judge of the superior court of St. Augustine be, and he hereby is, authorized to receive, examine, and adjudge all cases of claims for losses occasioned by the troops aforesaid, in one thousand eight hundred and twelve and one thousand eight hundred and thirteen, not heretofore presented to the said judge, or in which the evidence was withheld in consequence of the decision of the Secretary of the Treasury that such claims were not provided for by the treaty of February twenty-second, one thousand eight hundred and nineteen, between the governments of the United States and Spain: *Provided*, That such claims be presented to the said judge in the space of one year from the passage of this act: *And provided, also*, That the authority herein given shall be subject to the restrictions created by the provisoes to the preceding section."

The operation of this act, as well as its intent, was to reverse the decision of the Secretary of the Treasury, and to bring all these cases of claims for losses in 1812 and 1813 within the provisions of the ninth article of the treaty and the act of Congress of the 3d March, 1823, before referred to. It has been sometimes supposed or suggested that this act of 1834 was a separate and distinct gratuity, independent of the treaty, and standing alone by itself was to be construed without any reference to the act of 1823, or the ninth article of the treaty. Any such idea is so manifestly erroneous and untenable, that I shall not stop to notice it, further than to say that it has been repudiated by every Secretary of the Treasury who has acted under the law from 1834 to the present time, and that, so far as I am aware, every lawyer and every public officer of the United States, whose attention has been called to the subject, has uniformly held that the two acts of Congress of 1823 and 1834 were to be considered in *pari materia*, and to be construed together, as forming one act to carry out the provisions of the ninth article of the treaty. In fact, the act of 1834 contains in itself no appropriation or authority to pay the awards which may be made under the second section of that act, and no payment ever could have been made, except by reference to and under the authority of the act of 1823.

I assume, therefore, at this point, the postulate that the ninth article of the treaty is to be considered and looked to as the paramount law of the case, and that the acts of 1823 and 1834 are to be regarded as subsidiary to, and intended to carry into full and complete effect, the provisions of the ninth article, and to secure to the claimants under that article the "satisfaction" therein guaranteed to them; and hence that we are not to look merely to the municipal laws or regulations, either of this country or of Spain, as a guide to ascertain the precise extent and nature of the obligations of the United States under this provision of the treaty, but also to the laws and usages of nations—to those eternal and immutable principles of justice and equity which ought to govern nations in their intercourse with each other, and by which treaties and conventions are to be construed, and the obligations of nations with each other interpreted. In short, that it is a treaty stipulation; a national obligation or promise from one sovereign to another, and to be construed accordingly; and that the laws of nations, so far as they furnish any rules to govern the case, are to be resorted to in order to determine the measure of damages and nature or extent of "satisfaction," which is solemnly guaranteed by the treaty to individual Spanish inhabitants who suffered injuries by operations of the American troops in East Florida; and that it comports not, either with ordinary justice or national honor or dignity, to attempt to regulate the measure of damages which are to be awarded to those individuals, by local or municipal regulations; and much less by some alleged ill-defined custom or departmental usage of our own government. If authority is needed in support of this position, I refer to Mr. Wirt's opinion, (*Opinions of Attorneys General*, page 635,) wherein he quotes with approbation the language of Vattel, "that the law of nature alone regulates the treaties of nations." (Vattel, book 2, chapter 12, section 162.)

But before adverting to what I deem to be the well-established law of nations on this subject, I would ask, what would be the impression of any ordinary mind at all imbued with a sense of right and justice, on a question of this kind?

The inhabitants of Florida are, by an unlawful incursion of troops into their territory, despoiled of their property; their cattle and horses killed or taken and carried off; their movable property plundered or destroyed, and buildings burned. For all this, "satisfaction" is promised them; indemnification, recompense, compensation, payment; for they are all convertible terms, but "satisfaction" the most comprehensive of all.

Would it be considered a just and adequate satisfaction to pay to the individual suffering the injury, some twenty or thirty years after the loss occurred, the exact cash value of the property at the time the property was taken or destroyed, without adding interest, or any sum whatever, for the loss of the use of the property in the mean time? The answer of any person possessing either strong common sense or judicial wisdom, I think, would be promptly in the negative. The manifest justice and equity of making some compensation for the loss of the use of the property, or prospective profits to be derived from it,

is so obvious, that the mere statement of the proposition carries with it an unanswerable argument in its favor.

But without relying upon the obvious justice of such an allowance as part of the damages in such a case, or as a measure of damages, I think it will be found, that not only the law of nations and the practice of our own government, but also the common and civil law, (I think it might also be safely asserted,) the municipal law of all civilized nations, concur upon this point, and equally authorize and require the allowance of this interest. Not interest *eo nomine*, but as a measure of damages for the loss of the use of the property in question. No doubt, in many cases, the value of the use of one's property is much more than the ordinary rate of interest of the country. The exact value of the use, or of the profits to be derived from the use, of property depends upon so many contingencies, and might vary so much from year to year, that it would be difficult for any court or board of commissioners to undertake to fix the precise amount of injury or damage which might in a given case, and for a series of years, fairly result from the destruction or loss of the property. If converted into cash, the money would of course produce the ordinary rate of interest then current in the country; and hence the allowance of interest in lieu of more specific damages has been adopted as a rule most obviously just, and as affording a reasonable remuneration on the one hand, while it avoids extravagant or exorbitant damages on the other, though in municipal courts and for private wrongs it is usually considered the most mitigated measure of damages.

I proceed now to show the opinions of approved writers on public law on this point.

Rutherford, in his chapter on "Reparation for Damages done," lays down the rule thus: "In estimating the damages which any one has sustained, when such things as he has a perfect right to are taken from him and withholden or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of a thing is likewise the owner of such fruits or profits, so that it is as properly a damage, to be deprived of them, as to be deprived of the thing itself." (Rutherford's Institutes, book 1, chapter 17, section 5.)

This authority is cited by Mr. Pinckney, and relied upon by him in his argument as one of the commissioners under the treaty of 1794 with Great Britain. (Vide Wheaton's Life of Pinckney, pages 261 and 262.)

Reprisals are one mode of obtaining satisfaction by nations for alleged injuries; and that satisfaction, according to Vattel, and other good authorities on this subject, is "payment of what is due, together with interest and damages." Vattel, in speaking of reprisals says: "If a nation refuses to pay a debt or repair an injury, or give adequate satisfaction for it, the latter may seize something belonging to the former and apply it to her own advantage, till she obtains payment of what is due to her, together with interest and damages, or keep it as a pledge till she has received ample satisfaction." (Vattel, book 2, chapter 18, section 342.)

Mr. Wheaton, also, in his work on international law, lays down the

same rule in regard to reprisals, and quotes the above sentence from Vattel. (Wheaton's International Law, part 4, ch. 1, sec. 3.)

Grotius also says, that "the loss or diminution of any one's possessions is not confined to injuries done to the substance alone of the property, but includes everything affecting the produce of it, whether it has been gathered or not," &c. (Campbell's Grotius, vol. 2, ch. 17, sec. 4.) And again, in section 5 of the same chapter, this author says: "Damages are to be computed, too, not according to actual gain, but according to the reasonable expectation of it, which, in case of a growing crop, may be judged of by the abundance or scarcity of that particular season." (See also this 17th chapter of Grotius generally, on the subject of damages.)

But we have another source to which we can confidently look for a clear exposition of the law of nations on this point, and that is the prize courts of this country and Europe. (Vide 1 Kent's Com., 68, 69, and 70; Wheaton's International Law, page 47.) And in 9 Cranch, 244, case of the *Adeline* and cargo, the Supreme Court of the United States also say, that the "court of prize is emphatically a court of the law of nations, and takes neither its rules nor its character from the mere municipal regulations of any country."

Let us look, then, to see how the prize courts have dealt with this question, and what have been their decisions under it. In the case of the *Amiable Nancy*, 3 Wheaton, page 546, the Supreme Court of the United States say, that in estimating the damages for property captured or destroyed, "the prime cost or value of the property lost, and in case of injury the diminution in value by reason of the injury, with interest thereon, affords the true rule for estimating damages in such cases."

So in the case of the *Lively*, 1 Gallison, 315, Judge Story says: "The proper measure of damages in cases of illegal capture, &c., is the prime value and interest to the day of judgment."

And in the case of the *Anna Maria*, 2 Wheaton, 327, Chief Justice Marshall lays down the same rule for ascertaining the amount of damage, viz: "The value of the vessel, the prime cost of the cargo, with all charges, and the premium of insurance, when it has been paid, with interest, are to be allowed." And again, in the case of the *Appolon*, 9 Wheaton, 362, the same rule is affirmed, and the court say: "The just measure of damages has been deemed to be the actual value of the property, with interest upon the amount from the time of the trespass."

That such is also the rule of the British admiralty courts when sitting as prize courts, see the case of the *Acteon*, 2 Dodson, page 84, which is alluded to in Mr. Wirt's Opinion of May 17, 1826. (Vide *Opinions of Attorneys General*, pages 568, 569, and 570.)

In closing this citation of authorities going to show the public or national law, I cannot refrain from quoting the following language of Chancellor Kent: "In cases where the principal jurists agree, the presumption will be very great in favor of the solidity of their maxims, and no civilized nation that does not arrogantly set all ordinary law and justice at defiance will venture to disregard the uniform sense of established writers on international law." (1 Kent's Com., pages 18 and 19.)

I next turn to the practice of our government on this point, and I think it will be found that they have adopted this rule, and have uniformly insisted upon it against other nations, as affording the only just measure of satisfaction or indemnification for injuries.

The most important and leading cases which have occurred in the history of our government, are those which arose between this country and Great Britain—the first under the treaty of 1794, and the other under the first article of the treaty of Ghent. In the latter case the United States, under the first article of that treaty, claimed compensation for slaves and other property taken away from the country by the British forces at the close of the war in 1815. A difference arose between the two governments, which was submitted to the arbitrament of the Emperor of Russia, who decided “that the United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces.” A joint commission was instituted for the purpose of deciding and awarding upon the individual claims which were thus provided for; and one of the first questions that arose between the British and American commissioners, was as to the measure of damages to be allowed, *i. e.*, what is a just indemnification for property taken or destroyed, and whether the claimants were entitled to interest as a part of the damages?

The British commissioner refused to allow the interest, but the American commissioner (Langdon Cheves) insisted upon its allowance, and in a series of the most able and unanswerable arguments demonstrated the correctness of his position.

The language of Mr. Cheves, in many instances, in the course of his arguments, applies with so much force to these cases that it is worthy of most particular notice. He says:

“The claim is not of interest, *eo nomine*; it is adopted as a mitigated rule of damages, compensation, or indemnification, founded on the estimated pecuniary value of the article withheld; in that case the common law and the civil law are both clear in allowing reparation of the loss of the use of the thing withheld from the commencement of the tortious detention. The rule of the public law is the same.”

Again he says:

“Indemnification means a reimbursement of a loss sustained. If the property taken away on the 17th February, 1815, were returned now, uninjured, it would not reimburse the loss sustained by the taking away and consequent detention; it would not be an indemnification. The claimant would still be unindemnified for the loss of the use of his property for ten years, which, considered as money, is nearly equivalent to the original value of the principal thing; so in substituting a pecuniary value for the thing, unless interest is allowed for the use of the money, the claimant will remain unindemnified.”

Again:

“If interest be an incident usually attendant on the delay of payment of debts, damages are equally an incident attendant on the withholding an article of property; and when they are rendered in the shape of damages, they are usually given with a liberal and sometimes an unsparing hand.

"It is, then, a mitigation of the usual incident of damages for the detention of property to establish a fixed and equitable rate of interest as the equivalent. There is no doubt that this is the leading reason why boards of commissioners, sitting as the representatives of nations, have so generally made interest the rule of damages, instead of capricious discretion, which would, perhaps, often become an unjust and vindictive assessment of them."

In consequence of the disagreement of the commissioners, the commission was broken up, and the arguments and authorities submitted to the United States government, and the subject fully considered by it. The opinion of Mr. Wirt, then Attorney General, was called for by the Secretary of State, which opinion fully sustained the positions taken by Mr. Cheves in all respects. (Vide Opinions of the Attorneys General, pages 568, 569, 570, and 571.)

Mr. Wirt, after alluding to the fact that the slaves and other property of American citizens had been taken away in 1815, and withheld from them ever since, says: "They have lost the use of their property eleven years. Is the meager return of the average value at the time the slaves and other property were taken, a just indemnification for the whole wrong? Is it consistent with the usages of nations, which Sir John Nicholl recognizes, to redress an act of wrongful violence, by the return, at any distant time, of the naked value of the article at the date of the injury?"

The government of the United States adopted and approved these positions, as will be seen by the letter of Mr. Clay, then Secretary of State, to Mr. Vaughan, the British minister, under date of the 15th April, 1826, in which Mr. Clay says: "We are prepared to show, if it were proper now to enter upon this discussion, that interest is a fair and just component part of the indemnification which the convention stipulates, and that without interest it would fall far short of the intentions of his Imperial Majesty's decision."

These claims, however, were finally compromised between the two governments, by accepting from the British government \$1,204,960 as a gross sum, in satisfaction of the claims in question, Mr. Cheves having, as commissioner, previously reported to the government that the whole amount of all the claims would be about \$1,250,000, including principal and interest. The interest included in his estimate was about \$464,000. It matters not, however, I apprehend, how the claim was compromised, or what sum was received, unless the United States yielded the point of interest, which they did not do; but, on the contrary, must, from the above statement, have received more than \$418,000 expressly for interest, as estimated by Mr. Cheves.

An earlier case in which this principle of interest was involved arose under the treaty of 1794, between the United States and Great Britain, in which there was a stipulation on the part of the British government in relation to certain losses and damages sustained by American merchants and other citizens, by reason of the irregular or illegal capture of their vessels and other property by British cruisers; and the seventh article provides, in substance, that "full and complete compensation for the same will be made by the British government to the said claimants."



A joint commission was instituted under this treaty, which sat in London, and by whom these claims were adjudicated. Mr. Pinckney and Mr. Gore were commissioners on the part of the United States, and Dr. Nicholl and Dr. Swabey on the part of Great Britain; and it is believed that in all instances this commission allowed interest as a part of the damage. In the case of "The Betsey," one of the cases which came before the board, Dr. Nicholl stated the rule of compensation as follows:

"To reimburse the claimants the original cost of their property, and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations, and accepted by all neutral nations, for losses, costs, and damages, occasioned by illegal captures." (Vide Wheaton's life of Pinckney, page 198; also 265 note, and page 371.)

By a reference to the American State Papers, Foreign Relations, vol. 2, pages 119, 120, it will be seen by a report of the Secretary of State of the 16th February, 1798, laid before the House of Representatives, that interest was awarded and paid on such of these claims as had been submitted to the award of Sir William Scott and Sir John Nicholl, as it was in all cases by the board of commissioners. In consequence of some difference of opinion between the members of this commission, their proceedings were suspended until 1802, when a convention was concluded between the two governments, and the commission reassembled, and then a question arose as to the allowance of interest on the claims during the suspension. This the American commissioners claimed, and though it was at first resisted by the British commissioners, yet it was finally yielded, and interest was allowed and paid. (See Mr. King's three letters to the Secretary of State, of 25th March, 1803, 23d April, 1803, and 30th April, 1803, American State Papers, Foreign Relations, vol. 2, pages 387 and 388.)

Another case in which this principle was involved arose under the treaty of the 27th October, 1795, with Spain; by the twenty-first article of which, "in order to terminate all differences on account of the losses sustained by citizens of the United States in consequence of their vessels and cargoes having been taken by the subjects of his Catholic Majesty during the late war between Spain and France, it is agreed that all such cases shall be referred to the final decision of commissioners, to be appointed in the following manner," &c., &c. The commissioners were to be chosen, one by the United States, one by Spain, and the two were to choose a third, and the award of the commissioners, or any two of them, was to be final, and the Spanish government to pay the amount in specie.

This commission awarded interest as part of the damages. (See American State Papers, vol. 2, Foreign Relations, page 283.) So in the case of claims of American citizens against Brazil, settled by Mr. Tudor, United States minister, interest was claimed and allowed. (See Ex. Doc., first session Twenty-fifth Congress, House of Reps., Doc. 32, page 249.)

Again, in the convention with Mexico of the 11th April, 1839, by which provision was made by Mexico for the payment of claims of

American citizens for injuries to persons and property by the Mexican authorities, a mixed commission was provided for, and this commission allowed interest in all cases. (See communication of the President to the House of Representatives, including the report of the commissioners, under date of 25th August, 1842, Ex. Doc., House of Reps., second session of Twenty-seventh Congress, vol. 5, Doc. 291.)

So, also, under the late treaty with Mexico of 2d February, 1848. The board of commissioners for the adjustment of claims under that treaty, which lately sat at Washington, allowed interest in all cases for property lost, from the origin of the claim until the day when the commission expired.

Other cases might be shown in which the United States, or their authorized diplomatic agents, have claimed interest in such cases, or where it has been paid in whole or in part. (See Mr. Russel's letter to the Count de Engstien, of 5th October, 1818, American State Papers, vol. 4, Foreign Relations, page 639, and proceedings under the convention with the Two Sicilies, of October, 1832, Elliott's Dip. Code, page 625.) But I think it can hardly be necessary to pursue this subject further in order to show the practice of our government with foreign nations, or with claimants under treaties.

The rule of the common law on this point is the same as that already laid down as the rule of the public or national law.

In the case of Conrad against the Pacific Insurance Company, it was stated by Judge Baldwin that in actions of trespass or for torts, "the general rule of damage is the value of the property taken, with interest from the time of taking down to the time of trial. This is generally considered as legal compensation, which refers solely to the injury done to the property taken, and not to any collateral or consequential damages resulting to the owner by the trespass. These are taken into consideration only in a case more or less aggravated." (See 6 Peters, 273, and also 282, where the Supreme Court affirm the correctness of this rule.)

Sedgwick, on the Measure of Damages, (pp. 549 and 550,) says: "When trespass is brought for personal property, and no circumstances of aggravation are shown, the value of the property, with interest, furnishes the measure of damages."

In all cases of injury to property, whatever may be the form of the action, the rule that the value of the property at the time of the injury, with interest thereon from that time, is the measure of damages," is of universal application; and in various cases of trespass, trover, case, replevin, &c., this rule is abundantly supported by the following authorities:

Wilson *vs.* Conine, 2 Johnson's Rep., p. 280.

2 Greenleaf Evidence, p. 282, and cases there cited:

Particularly 14 Pickering, pp. 356 and 361.

14 Johns., 273; 15 do., 198, 206.

Sedgwick on Damages, 517.

17 Pickering, p. 1; 21 do., p. 559.

7 Monroe, 209; 1 Metcalf, 172.

2 Hill, 132; 3 Bibb, 92.

7 Metcalf, 354; 3 Little, 25.

Also, United States Digest, p. 510, and *Brannin vs. Johnson*, 19 Maine Rep., 361.

*Bissell vs. Hopkins*, 4 Cowen, 52.

*Hyde vs. Stone*, 7 Wendell, 354.

*Dellenbuch vs. Jerome*, 7 Cowen, 294.

Also, 7 Porter's Alabama Rep., 481.

15 Connecticut Rep., 302.

In fact, this principle must be so familiar to every common-law lawyer that it is perhaps hardly necessary to cite any authorities, much less to accumulate them, which might easily be done almost *ad infinitum*. I will only add two more citations, drawn from the civil law, to show that "fruits or profits were awarded in case of wrongful taking or detention of property," as part of the damages, by Justinian. (See Liber 22, *di rei vind.*; Liber 17; Cod. lib. 3 c. *De condit ex. leg.*; also, Domat, vol. 1, lib. 3, tit. 5.)

In the course of the argument, my attention was called to the well-known letter from Mr. Jefferson to Mr. Hammond, the British minister, of 29th May, 1792. (American State Papers, vol. 1, Foreign Relations, vol. 1, pp. 201, 213, 214.) That very able disquisition on the subject of interest is confined entirely to the question of interest on debts, or money demands, and when and under what circumstances it may or ought to be allowed or disallowed in such cases; and hence it furnishes no clear rule in respect to the allowance of interest as a measure of damages in cases of tort, or in redress of injuries, or as a compensation for the loss of the use, or of the profits, of the property illegally taken. At all events, there is nothing in the reasoning or arguments of that paper which in any respect militates against the positions above taken.

This controversy between Mr. Jefferson and Mr. Hammond was finally settled by the sixth article of the treaty of 1794, as will be seen by a reference to that article, in which this government certainly does not deny the propriety of the interest.

But it is said, "the government never pays interest." It will readily be admitted that there is no statute law to sustain this position. The idea has grown up from the custom and usage of the accounting officers and departments refusing to allow interest generally in their accounts with disbursing officers, and in the settlement of unliquidated domestic claims arising out of dealings and transactions with the government. It can hardly be pretended, however, that this usage or custom is sufficiently "reasonable," well known, and "certain," to give it the force and effect of law, and to override and trample under foot the law of nations, the municipal law of the country, and also the well-settled practice of the government itself in its intercourse with other nations. This would, indeed, be giving most potent effect to departmental usage.

That the usage or practice of any particular executive department of a government cannot be sustained, (however ancient it may be,) when against the well-settled principles of law, see 3d Burrows's Rep., 1767: "When the law is clear, usage cannot control it." (2d Cowen, 707, *New York Firemen's Insurance Company vs. Ely*, and 16 Johnson, 374.)

Now, if by the law of nations and all other laws it is clear that the

United States are bound to pay interest as a part of the damages in these cases, as I think I have shown that it is, certainly no practice or usage of the Treasury Department can relieve them from that obligation.

But the assertion that the "government never pays interest" is not founded in fact. There is no such inflexible usage or custom, in the broad sense in which it is generally understood or stated. The government is just as much bound to do equal and exact justice to all as an individual would be, and they not only do pay *interest*, but have done it in many domestic cases of a character similar to these claims, and that, too, under the advice and approval of the law officers of the government.

In the case of Major Tharp, referred to the Attorney General for his opinion, the present chief justice, (then Attorney General,) says: "I am not aware of any statute of the United States that forbids the Secretary of War or the accounting officers to allow interest to a claimant if it should appear that interest is justly due to him. As the United States are always ready to pay when a claim is presented, supported by proper vouchers, it can rarely, if ever, happen that they are justly chargeable with interest, because it is the fault of the claimant if he delays presenting his claim, and does not bring forward the proper vouchers to prove it and justify its payment. But in Major Tharp's case, or any other, if the Secretary of War, upon a review of the whole evidence, should be of the opinion that interest is justly due to the claimant, I think he may legally allow it." (Opinions of Attorneys General, 841.)

Here we have the whole length and breadth of the rule, and the reasons for it. But, if any such rule, or practice, or usage had acquired the force or dignity of a "custom" or law, the then Attorney General could not with propriety have said that the Secretary might "legally allow interest" in any case. If the rule was inflexible, if it was law, the Secretary could not depart from it.

In the case of O'Sullivan, the direct question arose, whether the party claimant was entitled to an allowance for the loss of the use of his property, in addition to the value of the property itself. The property was a vessel, and the claim was for demurrage, being much more than the legal rate of interest on the value of the property. The Attorney General, (vide Opinions of Attorneys General, p. 1115,) decided that it was allowable, and it is understood that it was allowed and paid at the Treasury Department as a part of the "actual loss."

In the case of Sibbald, an act of Congress provided that he should be paid the "actual damages" which he had suffered by injuries to his property; and in this case interest was allowed under the opinion of Attorney General Nelson, of 30th September, 1844.

In the case of George Fisher, an act of Congress gave him a "full and fair indemnity" for certain "losses and injuries" suffered by him. In this case interest was allowed, with the sanction of the Attorney General.

But I forbear to pursue this point any further. If enough has not already been shown to establish the propriety and justice, as well as the legality, of allowing interest in these cases, I should despair of

doing so either by argument or authority. If "Moses and the Prophets" were not sufficient for the unbeliever of olden time, so neither would a more lucid exposition or a greater array of authority tend to convince one who doubts upon this point.

It remains for me now to notice more particularly some of the other points and arguments of the respective counsel on the hearing of this case. The paper hereto annexed, (marked A,) shows the points submitted by the district attorney on behalf of the United States. He also made some objections to the admissibility of evidence, and other minor objections of that character, which were settled as they arose in the course of the argument, and which it is not deemed necessary to advert to more particularly.

On the part of the claimant, his counsel also made certain points, which are substantially stated in the paper hereto annexed, (marked B.)

It will be perceived by a reference to these "points" of the respective parties, that the true construction of the last clause of the 9th article of the treaty, and of the laws of Congress of 1823 and 1834, to carry it into effect, as well as the character of the decisions in these cases, whether judicial or otherwise, and the effect of the awards, were drawn in question by both parties, and made the subject of elaborate argument.

As the judge is required to adjudicate these cases according to the provisions of the treaty, it is, no doubt, very proper to inquire and ascertain the true construction of those provisions, as well as of the acts of Congress to carry it into effect. But it may well be doubted whether some of the questions above alluded to are necessarily or legitimately questions for my consideration, and to what extent I am called upon to give any decision in respect to them. And so far as they do not relate to the appropriate action of the judge, under the treaty and the laws, I do not intend, and shall not be understood, I trust, as attempting to give any authoritative decision upon them. But as they are so interwoven with each other that it is difficult to separate them, and as both parties have pressed them strongly upon my attention, and both parties (the district attorney on behalf of the United States, as well as the counsel for the claimant) have particularly requested my opinion on all the points argued, I proceed to state, as far as it relates to the main questions arising out of those points, my conclusions or opinion, although, in some respects, they are different from my former preconceived views.

I have already remarked, that I consider this clause of the ninth article of the treaty as the paramount law of the case, and the acts of Congress of 1823 and 1834 as auxiliary or subsidiary to the treaty, and intended to carry its provisions into effect. The mode provided by the treaty of establishing the amount of the claim in each of these cases, or of ascertaining the sum to be paid, is a novel and unusual one for such claims, and, so far as I am aware, is not found in any other treaty, or adopted in any similar case. Usually a board of commissioners is provided for the adjustment of such claims; but in this case the treaty provides, that the United States shall pay, or make satisfaction, for such injuries to individuals as "shall be established by process of law." It is not to be presumed that the able diplomatist who, on the part of

the United States, negotiated this treaty, and well understood the import of words, used this term at random, and without some definite intent; nor that the Spanish minister's attention was not called to this extraordinary mode of adjusting claims under a treaty, and that he did not well understand its effect. If this phrase or term is one not known to the law of nations, or one which, by the public law, has no particular meaning or construction attached to it, we must, of necessity, look to the common law, or the municipal laws of our own country or Spain, or wherever the term may be found, for the true construction of it. The term is one which is used in the Constitution of the United States, and either in the same language or substance, in the constitutions of many of the States, and one which is familiar both in this country and England, and well known to the common law; and, as a "term of art," Grotius says, recourse must be had to those most experienced in that art for explanation. (See Campbell's Grotius, vol. 2, chap. 16, on the Interpretation of Treaties, sec. 3; also Vattel, book 2, chap. 17, sec. 276; and same principle in Dwaris on Statutes, p. 702; and Puffendorff, book 5, chap. 12, sec. 4.) And again, Vattel says that "attention ought principally to be paid to the words of the promising party," and those words should, of course, have their full effect as he understood them. (Vattel, book 2, chap. 17, sec. 267; also, vide, sec. 268, &c.; also, Kent, vol. 1, p. 174; and Wheaton's Int. Law, p. 334, sec. 17; and particularly the *United States vs. Jones*, 3 Wash. C. C. Rep., 209, and at 215.)

Looking, then, at the sources from which we must of necessity derive the true construction of this term, we see at once that "process of law" must of necessity mean nothing short of judicial proceedings. Judge Tucker says that "due process of law" must be had before "a judicial court or judicial magistrate." (Vide Tucker's Com., vol. 1; Appendix, p. 203.)

Chancellor Kent (Com., vol. 2, p. 13, 6 edition, and note *b*) says: "The better and larger definition of 'due process of law,' is, that it means law in its regular course of administration through courts of justice." (See also Story's Com. on the Constitution, vol. 3, pp. 660 and 661, and Baldwin's Views of the Constitution, p. 137.)

In 4 Hill's Rep., p. 146, the supreme court of New York says that the words "cannot mean less than a prosecution or suit instituted according to prescribed forms for ascertaining guilt or determining title to property." (See also 2 Coke's Inst., p. 50, and 19 Wendell, 676.)

To establish a thing by "process of law," then, necessarily requires a hearing, trial, and judgment, before some judicial tribunal or magistrate, and the proceedings and judgment, or decision, must of necessity possess all the elements and attributes of a judicial proceeding, provided they are conducted by "due process of law."

If this position is correct, and after the most mature deliberation I think it is, then it follows, as a necessary corollary from the premises, that the awards in these cases were judicial decisions, and possess the ordinary attributes or effect of judicial judgments, and necessarily final and conclusive, unless appealed from by appeal to some superior judicial tribunal authorized to reëxamine and revise them.

But it is said that a direct supervisory or appellate power over the

awards of the judge in these cases is given, by the second section of the act of Congress of 1823, to the Secretary of the Treasury, and that he is authorized by that act to alter, revise, and modify them as, in his opinion, may be just.

The first answer to this is, that if the position above assumed be correct, and if the awards are judicial decisions, no such power can rightfully be given to the Secretary. The power to revise or reform the judgments or decisions of any court or judge acting judicially, can only be conferred on other courts, or on some judicial tribunal, and cannot constitutionally be lodged in the Secretary of the Treasury, or any other executive officer; and in so far as the act makes any such provision, it would be unconstitutional and void. (Vide 1 Wheaton, 304 and 380, *Martin vs. Hunter*.)

But the more proper view of this point, and a more easy solution of this apparent difficulty, is, I apprehend, that no such appellate power is given to the Secretary, and that such is not the true construction of the act of Congress.

The treaty, it should be borne in mind, provides that these injuries should be established by process of law—*i. e.*, judicially established, as is above assumed; and the obligations of the treaty, as to the mode of establishing them, is equally obligatory upon the nation, as is the duty of having them established and paid; and Congress could not (or perhaps I may better say ought not) make any law which should provide another and different mode not contemplated by the treaty, and in direct violation of it. I have no doubt that Congress might, for a good cause, annul the whole treaty, or declare some particular article of it should not be observed, (which would of necessity annul the whole.) Every nation, of course, possesses the power of determining for itself the propriety and expediency of renouncing treaties, and this nation no less than any other, (and they have exercised it, vide 1st vol. Stat. at Large, p. 518.) This is a necessary attribute of sovereignty; and if Congress should pass any such law or joint resolution, the courts of the country would, of course, be bound by the political action of the government in that respect, and would no longer consider such a treaty as the “supreme law of the land.” But no such question arises here; Congress have not attempted to do any such thing; on the contrary, every act which they have passed on this subject has been professedly with a view and *bona fide* intent to carry out the treaty. The act of 1823 is entitled, on the face of it, “An act to carry into effect the 9th article of the treaty,” &c., &c. And it is the clear duty of the judicial and executive departments of the government, in giving a construction to these acts, to so construe them, if possible, as to carry into effect the intention of the legislative power, and at the same time, if there is any apparent conflict between the acts and the treaty, to give that interpretation to them (if it can be done) which will make them harmonize with the treaty, and render them consistent with the treaty and each other; and, above all, not to give them such a construction as would virtually nullify the acts themselves, and render the provisions of the treaty or the laws themselves useless or nugatory.

Authorities are hardly necessary, I apprehend, to sustain this propo-



sition; but I will refer to the following: 2d Cranch, 64, or 1st Cond. Rep., 358 and 362; also, Mr. Wirt's opinion, already quoted, pp. 568 and 569; Dwarris on Stat., p. 690; Pennington *vs.* Cox, 2d Cranch, 33, or 1st Cond. Rep., 346. Let us see, then, whether a construction can properly be given to these acts which shall be entirely consistent with the treaty. And first, let it be borne in mind that the first section of the act of 1823 directs that these claims shall be adjusted (adjudged) "agreeably to the provisions of the ninth article of the treaty with Spain." (The word "adjust" is used in the 1st section, and "adjudged" in the 2d section; hence they may properly be considered as synonymous terms, or intended so to be in this act.) The manifest intent of this provision of the act of 1823 is, that the treaty should be the supreme or governing law of the case, and as that directed, so it should be. Hence, if it is the fair intendment of the treaty that these claims should be judicially established, then the law provides likewise for the same thing, so far as the first section of this act is concerned.

Is there anything, then, in the second section of this act, or the act of 1834, which militates against this position, or which clashes with this view of the case, or with the provisions of the treaty? The second section of this act provides that the judge shall report his decisions when in favor of the claimant, with the evidence on which they are founded, to the Secretary of the Treasury, "who, on being satisfied that the same is just and equitable within the provisions of the treaty, shall pay the amount thereof," &c. And in the first section of the act of 1834, there are the further provisoes to the Secretary's power to pay, "that no award be paid except in the case of those who, at the time of suffering the loss, were actual subjects of the Spanish government;" and, also, that no award be paid for depredations committed in East Florida previous to the entrance into that province of the agent or troops of the United States." And as these provisoes were, by the second section of the same act, made obligatory upon the judge, who was only authorized to adjudicate and decide these claims of 1812 and 1813, subject to these provisoes, and also subject to the further provision that the "claims should be presented to the judge within one year from the passage of this act," it follows, of course, that they were equally obligatory upon the Secretary, for he could only pay such as the law authorized the judge to award. Here, then, it would seem, was ample scope for the exercise of that supervisory power which is confided to the Secretary by the provision first above quoted, without interfering with the amount of the decree or award, or infringing any provision of the treaty or constitutional law.

When a record in one of these cases was presented, it became the duty of the Secretary to examine and ascertain,

1st. Whether the injury in question had been occasioned by the operations of the American army in Florida.

2d. That it had been suffered by a Spanish officer or individual Spanish inhabitant, or (under the provision of the law of 1834) "actual Spanish subject."

3d. That it had been established by process of law.

4th. (If it was a loss of 1812 and 1813.) That it had not occurred

or been committed previous to the entrance into Florida of the agent and troops of the United States in 1812.

5th. That the claim (if for losses of 1812 and 1813) had been filed and presented to the judge within one year from the passage of the act of 1834.

All this the Secretary might rightfully and properly do under the law; and all this, in fact, amounted to no more than an ascertainment on his part that the case presented for payment was justly and equitably within the provisions of the treaty, which, I apprehend, is synonymous with "just and equitable, within the provisions of the treaty." The law in effect requires the Secretary, before paying, to see that it was a treaty case, and one in which the judge had jurisdiction; and provided he was satisfied on those points, then to pay "the amount thereof."

The difference in principle between the right and authority to inquire into the jurisdiction or power of a judicial tribunal to pronounce any decree or award, or to render the judgment in question, and the appellate power to supervise such decision or judgment, and reform or amend it, in whole or in part, is a difference or distinction too familiar to require comment. Any person upon whom a judgment or decision may operate, or who may be called upon to conform to or execute it, either officially or otherwise, may rightfully exercise the authority first mentioned, and may inquire whether the court or judge had jurisdiction to render the judgment.

In these cases, the jurisdiction of the Florida judges was a limited and special jurisdiction, expressly conferred by the act of Congress, and could not be exceeded or enlarged, but must be strictly pursued in order to give validity to their awards. And although they are directed to adjudicate these claims "agreeably to the provisions of the treaty," yet they derive their sole power and authority from the acts of Congress, and must act strictly within the powers and jurisdiction conferred, in order to make their decisions of any binding force or validity, and especially in order to authorize the Secretary to pay them.

Their authority and jurisdiction depend upon the existence of certain facts which must necessarily be shown by the record and the evidence in the case, and hence there was a peculiar propriety that the act should direct the Secretary to examine and see whether the awards were just and equitable within the provisions of the treaty, which is, as I have already remarked, the same thing in substance, as justly and equitably, or fairly within the provisions of the treaty, and amounts, in substance, to an authorization to the Secretary to inquire and ascertain whether the case was within the jurisdiction of the judge, and one in which the law authorized him to make an award; and for this purpose it was provided that the judge should not only report his decision to the Secretary, but also on the evidence on which it was founded, in order that the Secretary might see that the party claimant was a Spanish officer, or an inhabitant or subject; and whether the injuries for which payment was claimed were, in fact, injuries occasioned by the operations of the American troops; and, in short, whether the case was one in all respects within the provisions of the treaty and the acts

of Congress, and one which the judge was authorized to adjudicate. And all this authority might well be conferred upon the Secretary without, in any respect, conflicting with that obligation of the treaty, which requires these injuries to be judicially established, or established by process of law.

And perhaps it is not unworthy of remark, that the law requires of the Secretary, in case he is satisfied that the award is just, "to pay the amount thereof—not such part or portion as he may deem just or equitable, but the "amount thereof"—which certainly very strongly favors the idea that Congress did not intend that the Secretary should interfere with the integrity of the award, or alter or reduce the amount of it. And also it may be asked, if Congress intended to give to the Secretary a general supervisory or appellate power over the action of the judge, why confine it to those cases only wherein the judge decided in favor of the claimant? Why not also give to the claimant as well as the government the benefit of this appellate power?

I should not have dwelt so long, nor at all, upon this point, (which may, perhaps, be considered more properly a question for the Secretary of the Treasury than for the judge,) had I not deemed it necessary in order to elucidate my views as above stated of the true construction of the last clause of the ninth article of the treaty, and to show, as I have endeavored, and I trust somewhat satisfactorily, that the obligations of the treaty to have these injuries "established by process of law" is not at all impaired by the acts; and that, by the true construction of the acts of Congress, there is no conflict between them and the treaty; but that, on the contrary, they may be, and ought to be so construed as to harmonize with the treaty, and with the principle first laid down, that the awards or decisions are judicial in their character.

I am not only well aware that a different view of this subject has been entertained by those for whose opinions I should have great deference, but I have myself formerly had a different view of the subject, and entertained a contrary opinion as to the judicial character of these decisions, and the nature and character of the powers and duties conferred upon the judges; but the very elaborate arguments of this question, which have been had before me, in this case, and an examination of numerous authorities, as well as of very able opinions of some of the most distinguished lawyers in the Union, have led me to examine this subject with much care and deliberation, and my examination and reflection have forced me to the conclusions above stated.

There is, however, another fact or circumstance which has had great influence on my mind in producing the conclusions which are above stated, and to which my attention was more distinctly called by a paragraph in a recent very able opinion of the present Attorney General of the United States, a copy of which, referred to in the argument, was laid before me by the district attorney.

If the power to adjudicate these cases, which is conferred upon the judges by the acts of 1823 and 1834, is not judicial in its character, and to be exercised judicially, then it follows, of course, that a kind of nondescript tribunal is created by these acts for the adjudication of

these cases, consisting of the judge and Secretary together, or of the judge alone, with a supervisory or appellate power in the Secretary, and that they act as or in lieu of a board of commissioners, or that the judge acts as a *quasi* commissioner, subject to the supervisory power of the Secretary. However this may be, or in whatever light it may be viewed, it is clear either that Congress conferred the power of adjudicating these cases as a judicial power, and to be exercised judicially, or they have established a separate and distinct tribunal for that purpose, consisting of the judge and Secretary, and have appointed the officers or members of that tribunal by act of Congress, which designated them in the act, not by name, but by their style of office. This would be a clear violation of the Constitution, (article second, section two,) which provides that the President shall nominate, and with the consent of the Senate, appoint all officers of the United States of every description, except certain inferior officers, mentioned in that section; but this is not a case within the exception. Here, then, is a dilemma, from which I see no escape, except by that construction of the acts of 1823 and 1834 which is above assumed.

It cannot be contended that the duty of adjudicating or awarding upon those claims was not an office, and one of high trust and responsibility. If it was, it could be created only in the constitutional way; it could not be conferred by act of Congress on any person by name or by his style of office; and, moreover, though additional duties of this kind might perhaps be rightfully imposed upon executive or administrative officers, yet it is clear that they could not be forced upon a judicial officer, unless they were of a judicial character. It is a well settled principle; that Congress cannot by law impose upon a judicial officer any duties except such as are of a judicial character, and to be performed judicially. (Vide 3 Story's Com. on Const., page 651, section 1771, and cases there cited; also, Am. State Papers, volume 20 pages 49, 50, and 51, Misc. volume 1.)

Now we must either come to the conclusion that Congress considered the duty and authority conferred upon the Florida judges by these acts to be of a judicial character, and to be exercised judicially, and that they so intended to confer it by the acts in question, and thus adopt the construction which I have assumed as the correct one; or we must conclude that Congress disregarded the principle last above stated, which has been well settled by the courts, and, moreover, that they violated the Constitution, and that the acts are nugatory.

Chief Justice Marshall says, that "where rights are infringed; where fundamental principles are overthrown; where the general system of the laws is departed from, the intention of the legislature must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects." And again; "that the consequences are to be considered in expounding laws where the intent is doubtful, is a principle not to be controverted." (Vide *United States vs. Fisher*, 2 Cranch, 358, or 1 Cond. Rep., 425.) So also in *Dwarris on Statutes*, page 755, it is said that the consequences are to be considered, and that "the courts will not so construe statutes as to admit of absurd consequences." (See also *Paine's C. C. Rep.*, page 11, and also cases already cited herein on the construction of statutes.)

The treaty had already provided that the injuries should be established by process of law, *i. e.*, judicially; and it only remained for Congress to designate the particular judges or tribunal who should adjudicate them; and this they did by the acts of 1823 and 1834.

And it may not be amiss here to remark, that the judge of the superior court of East Florida, and the court over which he presided, and of which he was the sole judge, possessed the ordinary powers and jurisdiction of a circuit and district court of the United States, as does the present district court, and as such was authorized to take cognizance of questions arising under the laws and treaties of the United States, and being established in the vicinage of these injuries, was a peculiarly appropriate tribunal to take cognizance of these cases.

It is difficult to conceive a case wherein the rules which I have before adverted to in respect to the construction of acts of Congress seem to be more applicable than to the case now presented. The construction, on the one hand, that the judge acted solely as a commissioner, and not judicially, would, it is believed, be equivalent to declaring the two acts of Congress of 1823 and 1834 unconstitutional and void, and at all events a violation of the provisions of the treaty, and in direct disregard of the constitutional principles as decided by the Supreme Court; while, on the other hand, if we adopt the construction contended for by the claimants, the acts will be consistent with each other, will harmonize with the treaty and the Constitution, and the manifest and apparent intent of the laws will be carried out, and no violence done either to the letter or spirit of the laws.

I have already remarked, in a previous part of this opinion, that it was strongly urged upon me, in the argument by the district attorney, that the decisions of the Secretary of the Treasury in regard to the allowance of interest in these cases was to be considered by me as the ruling of an appellate tribunal, and binding upon me as law or precedent; and I also stated, in part, my views on that subject, and why I had not deferred to the Secretary's opinion. I will only add, that if I am right in the construction which I have in the foregoing pages put upon the acts of Congress in question, and in the views which I have taken, it necessarily follows that the Secretary had no such revising power whatever, and that his decision or omission to pay the interest ought not in any respect to control my opinions or judgments.

I have now, I believe, in the course of this opinion, disposed of every point of any moment which has been raised by the respective parties. I regret that I have not been able to present my views and conclusions in a more condensed form, and with greater brevity; but the great variety and importance of the points raised, as well as the magnitude of the question from the amount involved in the general principle, must be my apology, if any is necessary, for so much detail.

It only remains for me to add, that on pronouncing this decision the district attorney prayed an appeal, and requested that that fact might be noted by me herein, to the end that he might, if the laws allowed it, prosecute such appeal, if instructed to do so.

I. H. BRONSON,

*Judge of the District Court of the United States  
for the Northern District of Florida.*

The foregoing is a true copy from the original opinion.

I. H. BRONSON, *Judge, &c., &c.*

Wherefore the district attorney, in open court, prayed an appeal to the Supreme Court of the United States, which appeal was granted as prayed in the following words: Appeal granted as prayed.

ISAAC H. BRONSON, *Judge.*

### A.

*Points submitted by Mr. Call, district attorney, on the argument of the claim of Ferreira, administrator of Pass.*

1. "The losses of 1812 and 1813 are not within the Florida treaty of 1819; that the act of Congress of 1834 is a mere gratuity, and not based upon the obligations of the treaty."

2. The term "process of law" in the treaty is not a technical term, meaning "a judicial trial, conducted according to the prescribed forms and solemnities," but a general term, equivalent to "laws passed for that purpose."

3. That if "process of law" is such a technical term, the acts of Congress of 1823, 1834, and 1847, have not fulfilled the treaty obligations.

4. That "process of law," in its technical sense, can only be executed after notice to both parties, after a fair and impartial hearing of both parties; and that no decision can ever be pronounced in "process of law" except in open court, and cannot be *ex parte*.

5. That the claims for losses under the Florida treaty are not "established by process of law," within the meaning of the treaty, when the judge shall have made his award, but only when "the Secretary of the Treasury shall be satisfied that the same is just and equitable within the provisions of the treaty."

6. That if these claims have been adjudged by the judge in Florida, as commissioner, or as judge and commissioner, or in any other manner than as the "court," then he is a subordinate officer, whose decisions are subject to the control and supervision of the Secretary of the Treasury, and no judicial weight or authority is attached to such awards.

7. That if the decisions or awards of the judge are subject to the control and supervision of the Secretary of the Treasury, then the judge should [have] given his award by the precedents established and adhered to at the Treasury Department, upon points of principle and law.

8. That the precedent of the Treasury Department has been not to award or pay interest upon this class of claims, and the judge here ought therefore not to allow it.

9. That by "process of law" interest "*eo nomine*" cannot be allowed in *acturis ex delicto*, to which this case assimilates itself, and is not warranted by law or the usages of nations.

## B.

*Points submitted or argued by claimant's counsel in the case of the claim of Ferreira, administrator of Pass.*

1. That the injuries for which satisfaction is stipulated by the last clause of the 9th article of the treaty of 22d February, 1819, between the United States and Spain, were in violation of our treaty with her and of the laws of nations, for which the United States were bound by such laws to make a full indemnity, and that this clause of the treaty was intended to secure such indemnity.

2. That this provision of the treaty, by requiring the claims to be "established by process of law," bound the United States to cause them to be established judicially, and to pay such treaty claims as should be so established, and that this only could be done by some judicial court or judicial magistrate to be constitutionally appointed for that purpose.

That Congress, by opening the courts and requiring the judges thereof to receive and "adjust" and "adjudge" these claims agreeably to the provisions of the treaties, have affirmed and sanctioned this construction of the obligation of the treaty.

That treaties are to be construed like statutes or contracts, and that the words "by process of law," being well-known and well-defined technical words or terms borrowed from the common law, must be construed by their meaning in the code from which they were borrowed, according to the rule laid down by the United States courts and writers of the public laws; and that the law of nations has no peculiar technology of its own from which a different meaning can be legally inferred. That our extradition and other treaties are replete with technical words and phrases borrowed from the common or civil laws; and that this is the common and necessary legal rule for constructing such words and phrases.

3. That treaties being compacts between nations or sovereigns, the extent or measure of their obligation is to be decided by the laws and usages of nations, and not by the municipal laws or usages of either party to the compact; and that the measure of damages to which the claimants are entitled under the provision of the treaty in question, is a pure question of law, and is to be decided by the laws of nations which govern such treaty obligations.

4. That the measure of damages usually allowed in these cases, namely, the value of the property at the time of its loss or destruction, with the legal interest of the province by way of damages, as a satisfaction for the further loss of the use or fruits of the property destroyed, is fully sanctioned and required by these laws, as laid down by all the writers on the public laws, by the uniform decisions of the Supreme Court of the United States, by the prize courts in England, and by the uniform practice of the United States in its diplomatic intercourse, and in the construction of its treaties with other nations, from Jay's treaty of 1794 down to its last treaty with Mexico, and this is the lowest measure of damages known to the public law for such in-



juries to property; and the common and civil law, in cases arising under them, fully sanction the same measure of damages for injuries to property.

5. That the acts of Congress of 1823 and 1834 were intended in good faith to carry this stipulation of the treaty into full and complete effect.

That these acts, together with the treaty, are to be construed in *pari materia*, the acts being subsidiary to the treaty, and intended to effect its full and complete execution according to its obligations under the laws and usages of nations, without any reference to the usage of the Treasury Department or any other municipal usages of the United States, which are totally inapplicable to treaty cases and obligations; and that thus construed the said acts require the judges to allow, and the Secretary of the Treasury to pay, the said measure of damages as required by the public law.

6. That the said acts are to be construed with reference and in subordination to that provision of the treaty which requires the injuries, and their amount or extent, to be established judicially, ("by process of law,") and that thus construed, the decision of the judges as to the amount or extent of the injuries in cases shown by the evidence to be "within the provisions of the treaty" is final and conclusive, and the revisory power of the Secretary of the Treasury must be limited to deciding upon the evidence reported to him, whether the claim or the injury thus judiciously established, is "within the provisions of the treaty," viz: whether it was suffered by a Spanish officer or individual Spanish inhabitant, ("subject,") and whether it was occasioned by the late operations of the American army in Florida. And if, upon the evidence, he decides it was, then, as the act expressly requires, he is bound to pay the amount thereof—nothing more and nothing less than the amount of the decree of the judge in Florida.

That the first section of the act of 1823 requires the claims to be "adjusted" and "adjudged" agreeably to the provisions of the treaty by the judge in Florida, and that there is no other provision for their adjudication; and that the second section of the act provides simply for the payment by the Secretary when, from the evidence, he finds them "within the provisions of the treaty," and which treaty expressly requires the amount or extent of the injuries to be "established" judicially. That had Congress intended the Secretary to exercise a full supervisory and appellate power, and to pay such parts of said decrees only as he should establish, different language, and that more appropriate to such a purpose, would unquestionably have been used; and, besides, such a construction involves the absurdity that Congress, while professing to carry the treaty into full effect, intended to violate that part of it which requires the claims to be established judicially, and which cannot be done by an executive officer. The construction contended for in behalf of the claimant, harmonizes every provision of the acts with each other, and with the treaty, and gives effect to the whole. The injuries are, by that construction, "established" judicially, as the treaty requires.

They are adjudged by the judges in Florida, "agreeable to the provisions of the treaty."

And when the evidence satisfies the Secretary that the claim is "within the provisions of the treaty," or "just and equitable within the provisions of the treaty," which is the same thing, he will "pay the amount thereof."

The provisions of the acts of 1834, as to payment, will also be strictly fulfilled, and the executive and judicial departments kept within their appropriate spheres of action. The acts of Congress expressly make the provision of the treaty the standard for the adjudication of the claims by the judges and their payment by the Secretary, and there is no other law for the government or either, but the treaty, which is thus made by Congress a part of the acts, and the controlling law of the case.

7. The duties of the judges of the superior court of Florida, and of the judge of this court, in deciding these claims under the said acts, are strictly judicial.

They exercise, "within their respective jurisdiction," the judicial authority previously conferred upon them in federal cases arising under the laws and Constitution of the United States, and act in that capacity in which they had been previously nominated by the President and confirmed by the Senate, and under the commissions which they respectively held, and the oaths which they had respectively taken as such judges. "The provisions of the treaty," which were made part of the acts of Congress, require them to act in that capacity, and they had not been constitutionally appointed, commissioned, or sworn in any other, nor have they ever been. They exercise the same judicial power and authority that was vested in the court of Kentucky district by the judicial act of 1789 in such cases; which said court was a regular constitutional court, and upon which Congress conferred, and could confer, no powers but such as were strictly judicial.

That the Secretary of the Treasury acts as such secretary, and in the executive capacity in which he had been previously nominated, confirmed, commissioned, and sworn, and in which alone he is authorized to pay money out of the treasury; and that Congress did not intend, and was not authorized by the Constitution, to confer judicial power upon him; and that so far as he has attempted to exercise it, his acts are without authority of law and void.

8. That the decisions of the Secretary, rejecting the interest decreed as a legal part of the damages by the judges, do not form legal precedents which bind the judge of this court.

That the executive decisions do not form legal precedents which bind this court, or even succeeding Secretaries when against law.

That decisions by the courts, even when against the provisions of the statutes or treaty, or the common law do not form binding precedents; and that the decisions of the Secretary rejecting said interest were made under the mere municipal usages of the Treasury Department, which are not applicable to treaty cases; and that there has, therefore, been no decision by any Secretary under the laws and usages of nations, which alone, it is now conceded, govern treaty cases.

CHAS. C. SHERMAN,

*For Claimant.*

Office of the judge of the district court of the United States, for the northern district of Florida.

ST. AUGUSTINE, *September 10, 1851.*

The documents, of which the following are copies, numbered from one to forty-two, inclusive, were found on file in the office of the keeper of the Spanish archives at this place, in 1834, and certified copies furnished by him to Judge Reid at that time, of which Mr. Sanchez, then translator and interpreter of the court, made translations and copies. When the original was in the Spanish language he made a translation, and certified it.

These copies are taken from Mr. Sanchez's certified translations, and from the original certified copies of the keeper of the archives, when the document was in English; all of which were turned over to me, as part of the papers or records appertaining to these cases of claims for losses in 1812 and 1813, under the ninth article of the treaty with Spain.

I had supposed that Judge Reid furnished copies of these to the Treasury Department at the time he obtained them; but, not being certain of that fact, I now forward them.

They serve to illustrate the history of the invasion of East Florida, in 1812, by the agent and troops of the United States, and of the (so called) patriot war of that period.

They are referred to in my opinion and decision in the case of Francis P. Ferreira, administrator of Francis Pass, deceased, at page 81 of the record in that case.

I. H. BRONSON, *Judge, &c., &c.*

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No. 1.

FERNANDINA, *March 10, 1812.*

GENTLEMEN: Having learned, with certainty, that a number of citizens of the United States have entered our province, and who, united with some of our rebels to the government, commence to commit hostilities, [by] violating our territorial rights without the requisite of a preceding law, therefore, I hope you will have the goodness to inform me if the government of the United States have any part in or knowledge of said proceedings, or permits that her citizens should be the instruments of a like nature, contrary to all the treaties of amity existing between the two nations.

You will be pleased to answer me through Don George Atkinson, the bearer, for the information of my superior government.

God preserve you many years.

JUSTO LOPEZ.

The MAGISTRATES OF ST. MARY'S, *Ga.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOSEPH S. SANCHEZ,  
*In. and Tran. Superior Court, E. D. F.*

## No. 2.

ST. MARY'S, *March 15, 1812.*

SIR: The undersigned have had the honor, this day, of receiving your favor addressed to them, and delivered by Mr. G. Atkinson.

They have to regret that they are unable to say whether the proceedings alluded to in your letter are or are not authorized by the government of the United States; having no information, excepting that collected from vague report, similar in substance to that which the commandant appears to have received.

Very respectfully, we are, sir, your obedient servants,

ABRAHAM BESSANT, *J. J. C.*

STEPHEN MOODE, *J. J. C.*

JOHN ROSS, *J. J. C.*

Al Señor DON JUSTO LOPEZ.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine,

[L. S.] Territory of Florida, this twenty-ninth day of September,  
A. D. one thousand eight hundred and thirty-four.

ANTONIO ALVAREZ, *K. P. A.*

## No. 3.

ST. MARY'S, *March 15, 1812.*

MY DEAR SIR: The determination of the United States to take possession of our province by conquest have caused us to agree, who have interested ourselves in the advantages which we actually enjoy, to place it under their protection; therefore we have already secured all the country between the rivers of St. John's and St. Mary's, and, had it not have been for an unexpected circumstance, we would have had possession of St. Augustine and the fort on to-morrow night; so that you see how far I am engaged in this business, and that I cannot now retrocede. Be assured, sir, (that in whatever light my present conduct may make me appear,) that I yet have, and hope to possess always, the feelings of a gentleman and a man of honor; and permit me to say to you, that the attention which I have received from yourself and from my respectable friends, the old and young Arredondos, will always give you claims upon my services.

Two gun-boats, which is all we have required, will enter St. John's to-day; and we are encamped, increasing like a snow ball; and we have already sufficient forces to conquer all the province; we intend laying siege to Amelia island, or, more properly, to invite you to unite with us in our glorious cause. And I assure you, that, if our proposition is admitted by you without objections, none of our soldiers shall

place their feet upon it; but otherwise, if you do not admit it, no one can answer for the consequences.

The first condition which we have secured is, that Fernandina shall not be subjected in her commerce to the restrictions to which the United States are at present, during the term of twelve months, calculated from the 1st of March next ensuing; and that it shall be a free port until the expiration of said term, although the United States and Great Britain should declare war. If you surrender, or agree to unite with us, two gun-boats will be immediately ordered there to preserve good order, and to prevent any difficulties, which is my greatest wish.

I am, my dear sir, with great sincerity,

JOHN H. McINTOSH.

DON JUSTO LOPEZ.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOSEPH S. SANCHEZ,

*In. and Tran. Sup. Court, E. D. F.*

#### No. 4.

EAST FLORIDA, BELL'S RIVER, *March 16, 1812.*

SIR: The patriots of the district situated between the rivers St. John's and St. Mary's invite you to unite with them in their patriotic undertaking, which is to place themselves under the protection of the government of the United States, which guaranties to every man his religion, his liberty, and his property, and that she will pay to every soldier and individual the amount that may be due to them by the Spanish government, &c., &c. Or they summon you to surrender the town of Fernandina, and they will grant you the following conditions:

First. The garrison shall march from the lines with their arms, and shall receive their parole as soon as their arms are given up.

Second. Property of all descriptions shall be considered sacred, without being examined into or touched, and shall remain in your possession and use in the same manner that it was previous to the capitulation.

Third. The island shall, within twenty-four hours after the capitulation, be ceded to the United States, under the express conditions that Fernandina shall not be subjected to the restrictions on her commerce that exist in the ports of the United States, and shall be free to British vessels and produce, and to other nations paying the usual tonnage and import duty; and, in the event of the United States and Great Britain going to war, the port of Fernandina shall remain open to British merchants and goods, and shall be considered a free port for the term of one year, or rather from this time to the 1st of May, 1813, if Great Britain will permit it.

Fourth. That the inhabitants who have been settled in the country, and have enjoyed the privilege of cutting timber, shall have the same privilege continued to them until the 1st of May, 1813, to the exclusion of other individuals, and precisely as they had it until now.

Fifth. Commissioners will be appointed by you to negotiate with those of the patriots at Low's plantation, where they will be treated with every respect, for the purpose of effecting a treaty founded upon the foregoing principles.

These are the terms which we offer you, whom we desire to consider and embrace as brethren, for it is our wish. You will answer these propositions within one hour after you have received them, and our flag of truce has orders to wait that time.

We are informed, sir, that you have armed the negroes on the island against us; we hope it may not be true; for if we find it to be so, you will recollect that we solemnly declare to give no quarters in the town of Fernandina. Finally, we supplicate you to reflect well upon this subject, that you may not bring upon yourselves, by fruitless opposition, those excesses of which yourselves, more than we, will be the authors. The United States gun-boats will coöperate for the purpose of preventing the British vessels, &c. from acting hostilely against us.

I am, sir, with great respect, your humble servant,

LODOWICK ASHLEY,

*Colonel Commandant.*

THE COMMANDANT OF AMELIA ISLAND.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int. and Trans. Sup. Court, E. D. F.*

No. 5.

AMELIA ISLAND, *March 16, 1812.*

I refer you to Messrs. Joseph Arredondo and Joseph Hibberson for the answer to your letter of this morning.

JUSTO LOPEZ.

MR. LODOWICK ASHLEY.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOSEPH S. SANCHEZ,

*Int. and Trans. Sup. Court, E. D. F.*

No. 6.

BELL'S RIVER, LOW'S PLANTATION,

*March 17, 1812.*

SIR: According to agreement, General Mathews will be at this post to-morrow morning, at ten o'clock; but in the event of his refusing to receive the cession of the island from any others but the patriots, we require and hope that your commissioners may be authorized to cede it

to us, and you may rest assured that we will punctually comply with the terms offered you yesterday.

I am, sir, &c.,

LODOWICK ASHLEY,  
*Colonel Commanding.*

The COMMANDANT OF AMELIA ISLAND.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*In. and Tran. Supt. Court. E. D. F.*

No. 7.

FERNANDINA, *March 17, 1812.*

SIR: I have received your letter of yesterday, and in answer thereto I say that the commissioners will leave this post on to-morrow, to meet General Mathews, as was agreed upon on yesterday.

JUSTO LOPEZ.

Mr. LODOWICK ASHLEY.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Tran. Supt. Court. E. D. F.*

No. 8.

PATRIOT'S CAMP, BELL'S RIVER, *March 17, 1812.*

It has been the voice of humanity, and our desire to avoid the shedding of blood, which has delayed our march to that post, and at the same time I expected that the friendly and liberal propositions contained in my first communication would have produced an immediate adjustment. But I see, with regret, that your conduct has been equivocal and evasive, and, therefore, I inform you that the negotiation is at an end; and I charge you, on pain of death, to return to the island and inform the inhabitants that I will this day make my landing upon it, and that I will not fire a single gun, or commit any disorder, if they do not fire upon me. But, in the event that they do, we will show no quarters, and we will proceed to confiscate the properties of all those who should do so immediately; but if they surrender, I obligate myself, in the most solemn manner, to comply with my first proposals.

With the greatest respect, I am, gentlemen, yours,

LODOWICK ASHLEY,  
*Colonel Commanding.*

Messrs. ATKINSON and YOUNGE,

*Commissioners on the part of the Garrison of Amelia Island.*



I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Trans. Sup. Court, E. D. F.*

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No. 9.

*The Commandant of Amelia Island to Commodore Campbell.*

AMELIA ISLAND, *March 16, 1812.*

SIR: I have the honor of informing you that a number of men who call themselves patriots have taken up arms and demanded the surrender of this post to them, saying that the United States had determined to take possession of this province by force of arms. I have to request of you, therefore, to say if you are in possession of such orders.

With great respect, I am, sir, your obedient servant,

JUSTO LOPEZ.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Trans. Supt. Court, E. D. F.*

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No. 10.

FERNANDINA, *March 16, 1812.*

According to your orders we went this day, at 3 o'clock in the afternoon, to execute them, in this manner. We found Commodore Hugh Campbell on board of one of the United States gun-boats, which was at anchor at the mouth of this harbor, and we presented to him your letter, who answered us that he had in his hands a letter which at that moment he was going to forward to you, respecting one of his boats, which had been missing since the night before; and that he had, previous to our arrival on board, dispatched a boat with a letter to General Mathews, who he believed was at Point Peter, for the purpose of satisfying himself on one point, and that until he received the answer of General Mathews it was not possible for him to reply to you. And, after waiting on board a considerable time, Commodore Campbell said to us that he regretted he could not answer your said letter, but that he would lose no time in doing so as soon as he received the answer he was expecting from General Mathews.

We are, sir, with due respect, your obedient servants,  
GEORGE ATKINSON,  
GEORGE J. F. CLARKE.

Don JUSTO LOPEZ,  
*Commandant of Amelia Island.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Trans. Supt. Court, E. D. F.*

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No. 11.

UNITED STATES GUN-BOAT, No. 164,  
*March 17, 1812, at 7 a. m.*

SIR: I have been waiting until this hour for General Mathews's answer, which I have not yet received, and I hope that this will be a sufficient excuse for not having replied to your letter by Mr. Atkinson.

I take the liberty of informing you that the naval forces of America, near Amelia, do not act in the name of the United States, but do it in aiding and assisting a large portion of your inhabitants, who have thought proper to declare themselves independent, and are now in the act of supplicating you to unite with them in their cause. You can readily, sir, form a conception of the task which has been imposed upon me, but I hope that it will be accomplished without the effusion of human blood, while the arm of humanity, and protection will be extended to the objects that deserve it.

I have the honor of being, with great respect, &c.,

HUGH CAMPBELL.

Don JUSTO LOPEZ,  
*Commandant of Amelia.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Trans. Supt. Court, E. D. F.*

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No. 12.

AMELIA, *March 16, 1812.*

SIR: I have received, this morning, a letter written by John H. McIntosh, and signed by Lodowick Ashley, demanding the surrender of this post, to place it under the protection of the United States; I have also received a letter, written and signed by the said John H. McIntosh, assuring that, as the United States had determined to take possession of this province by conquest, himself and others had preferred placing it under the government of the United States for the security of persons and property.

These declarations, being connected with the circumstance that the principal part of the armed forces now in this province are Americans, have determined me to inquire of you if the United States are to be considered as principals or auxiliaries (and if either, which) in the present invasion of this province?

Messrs. Joseph Heberton and Joseph Arredondo go with orders to receive your explanation on these points; and I beg you will explain to them what may occur in relation to this business.

JUSTO LOPEZ.

The COMMANDER OF THE AMERICAN FORCES.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int. and Tran. Sup. Court, E. D. F.*

No. 13.

*J. Laval, Commander of the American Military Forces to the Commandant of Amelia Island.*

POINT PETER, *March 16, 1812.*

SIR: I have this moment been favored with your letter of this day, informing me of the letter which you received this morning, written by John H. McIntosh and signed by Lodowick Ashley, demanding the surrender of that post to place it under the protection of the United States; and that you have also received a letter written and signed by the said McIntosh, assuring that, as the United States had determined to take possession of the province by conquest, himself and others had preferred placing it under the protection of the United States for the security of persons and property.

You desire to know from me, sir, if the United States are to be considered as principals or auxiliaries? I have the greatest satisfaction in informing you that the United States are neither principals or auxiliaries, and that I am not authorized to make any attack upon East Florida; and I have taken the firm resolution of not marching the troops of the United States, having no instructions to that effect.

I am, sir, yours, with respect,

J. LAVAL,  
*Major Commanding.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int. and Tran. Sup. Court, E. D. F.*

No. 14.

FERNANDINA, *March 17, 1812.*

DEAR SIR: Proceeding to the execution of the orders with which you were pleased to charge us, we were on the point of embarking

when we were informed that General Mathews had left the encampment of the insurgents on Bell's river, and was at that moment in the American camp at Point Peter, consequently we changed our course and went first to Point Peter, and from thence we crossed over to that of the insurgents by way of Jolly river, and we returned to this post a little after midnight.

We were received at Point Peter by a captain of the regular troops, who conducted us to the lines. We informed him that we had a letter for the commandant of the American forces, and that we did not know whether we ought to present it to General Mathews or to Major Laval; he informed us that the latter was the military commander, but, if we came on public business, he presumed our mission was to the first, and conducted us to General Mathews, to whom we exhibited your letter, and he replied to us that Major Laval was the commander of the forces. He informed us at the same time that he was commissioned on the part of the United States to take possession of this province, and would take particular pleasure in receiving and answering the questions we might think proper to ask him. We had already entered into conversation when Major Laval appeared in the room where we were, and we presented to him your letter; he signified to us that he would take pleasure in seeing us in his quarters, but that he could not communicate with us in the place where we were. On our arrival at the quarters of Major Laval, he informed us that the conduct of General Mathews had placed him in the most extraordinary and disagreeable situation; that he was compelled to become a sentinel himself in his own camp; that he had attempted to seduce his troops to leave him, but that we might rest tranquil on this point, because his troops would not move one step without him; and, to satisfy us on this subject, he stated to us the following circumstance: that, at the commencement of General Mathews's arrangements for this revolution, he asked him for a detachment of United States troops to assist in taking St. Augustine by surprise, and that his men came to him and declared that they would not march unless he commanded them. And, finally, he assured us that they had used every stratagem that was possible to induce him to engage in this business with the United States troops, but that he had rejected with firmness all the offers which had been made to him, and that, in his opinion, the conduct of General Mathews never could be approved by a great nation like the one he had the honor of serving; and he withdrew to write the letter which we delivered to you this morning. Major Laval was very candid with us, and his conduct in this business was certainly praiseworthy. We afterwards went again to meet General Mathews, who we found in company with Brigadier Floyd, of the Georgia militia. General Mathews assured [us] that he had instructions from his government to receive East Florida, or any part of it, from the local authorities, or if he received any positive information that any foreign power intended to take possession of it, he was authorized to take it by force of arms. We asked him if he considered the individuals who had rebelled against their government as the local authorities; to this he answered that he did, and added that he had received positive information that the British contemplated landing here two regiments

of blacks. We asked him if he could give us his author; he said to us that he had his information from a person residing in Georgia, who he understood was a half-pay British officer. General Mathews directed his secretary to read to us a treaty which he had made with McIntosh, the chief of the insurgents, which appeared to us contained nothing more than a detail of the articles mentioned in Ashley's letter, which you received yesterday.

Before we departed we assured General Mathews that this was truly an American invasion; that the greater part of the people armed against us were American citizens, brought to our province by the offer which he had made to them of giving to each of them five hundred acres of land, but that, if he would withdraw his support from them for one week, we obligated ourselves, in your name, that Amelia Island would surrender to him, if before the expiration of that time we had not driven the insurgents the other side of St. Mary's river; to which he made no answer. We went afterwards to Low's house, on Bell's river, where we found McIntosh, Ashley, and Cook; we delivered your letter to Ashley, and we informed them that you could not and did not wish to enter into any treaty with them, and that you would neither, under any conditions, deliver to them the island; and, after much uninteresting conversation, we agreed that if General Mathews wished to treat on the part of the United States, that you could then treat with him with honor. They assured us that General Mathews would be at Low's house at ten o'clock this morning, and we agreed that you would appoint commissioners to meet him at the hour appointed, and that you had nothing, and did not wish to treat with them. All of which we reported to you verbally last night.

We are, sir, with due respect, your servants,

JOSÉ HIBBERSON,

JOSÉ DE LA MAZA ARREDONDO.

Don JUSTO LOPEZ,

*Commandant of Amelia Island.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int. and Tran. Sup. Court, E. D. F.*

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No. 15.

*The Commandant of Amelia Island to General Mathews.*

FERNANDINA, March 17, 1812.

SIR: I have thought proper to appoint and charge Messrs. Philip Younge and George Atkinson as commissioners on the part of Amelia Island to treat with you, as the commanding officer on the part of the United States, upon all subjects relating to the present invasion of this province.

I have the honor of being, respectfully, your servant,

JUSTO LOPEZ

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Tran. Sup. Court, E. D. F.*

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No. 16.

AMELIA, *March 17, 1812.*

SIR: Agreeably to your orders and instructions appointing us commissioners to meet General Mathews, we went to the insurgents' camp, at Low's plantation, on Bell river. It would be proper that we should here observe to you, that at our leaving here at ten o'clock this morning, the United States gun-boats were coming tacking to this port, and before we reached Low's plantation, we saw clearly that some of them were anchored near or in front of this town. We were received by John McIntosh and William Ashley, with a guard, and conducted by them with our eyes blindfolded, about fifty yards, to a small house, where we were joined by Lodowick Ashley and George Cook. Inquiring for General Mathews, they informed us that he had not arrived, and that they were of opinion that he would not come; under this supposition they wished us to treat with them, but we objected to it, because we had no authority from you to that effect, and we determined at all events to wait for the general one hour; there was much conversation, but as it was not official, your instructions not being extended to treat with them, it will not be necessary to detail it; but that they urged us much to surrender to them this post, in order to avoid the effusion of blood, and they accused us of having treated them with contempt, by refusing positively to treat with them; and threatened us with marching immediately to Amelia Island. General Mathews having arrived with Colonel Isaacs, they left us conferring with these gentlemen, and we delivered your letter to the general.

We proposed to General Mathews, the first article of your instructions, which was, if he was authorized by the government of the United States to take possession of this province by force of arms? He answered that he was not, but that he had instructions to receive it from the local authorities of the country, and, considering the patriots as such, he had received it from them.

"You then, general, consider the land we are now on as part of the United States?" He answered, "Yes, from Rosse's bluff."

"Are the naval forces of the United States authorized to coöperate with the party that are now preparing the attack upon Amelia Island?" He answered that they would not assist.

"If we repel the rebels, you consider yourself authorized by your government to take possession of Amelia Island by force of arms?" He answered, "I have orders from my government to take possession of it, in case there should be any appearance of the British attempting to send a force to take it; and I have now positive information that they are going to send their black troops for this purpose."

"If the United States naval forces fire a gun upon Amelia, we can then surrender with honor to superior forces; but we will never surrender to those men whom we can repel." He answered, "this is an affair between yourselves, because the United States gun-boats will not fire a gun, nor will they interfere with you, unless some British vessel should aid you, and in this case they have orders to fire upon you; and I am informed that you have been supplied with arms and ammunition by some vessels that are now in port. We have a right, sir, to ask of the British, who are in our ports as allies, their assistance, and even to take from them by force arms and ammunition, which we have done." He said "they had no right to interfere in this business, and if they did, as I have understood they intend doing, the gun-boats have orders to fire upon you."

We consider, sir, that the United States have already committed hostilities by the entrance of their gun-boats at this critical time into our waters of Amelia, evidently with the intention of deterring our town with their threats." He said, "you may think what you please, because this is an affair of my government."

We are charged, general, to inform you that there are a number of citizens of the United States, who have joined the party that is going now to the attack of Amelia, and they are now here, and we demand of you to detain them. He said "that he had no knowledge of any, nor he had no command over them; you ought to appeal to the authorities of the State of Georgia."

We again repeat, sir, and inform you, that among these people there are a number of citizens of the United States. Finding, Mr. Commandant, that the object of our appointment could not be effected, we returned with all possible dispatch, and we delivered to you the letter which was delivered to us by the insurgents who were preparing to land; and on our arrival here, we found four United States gun-boats still at anchor, three of them at the distance of a short pistol shot from the beach, and in front of our guard, with their cables sprung, their guns uncovered and pointed at the guard, their matches lit, and the crews at their respective posts.

This extraordinary conduct of the United States forces obtained the end to which it was directed, because we found on our return the people dismayed, and many of them had abandoned their posts, and all exertions to induce them to return were ineffectual. When you well know, sir, that at our departure from here at ten o'clock in the morning, which was before the arrival of the gun-boats, they were all of them determined not to surrender to the insurgents, and they were never in better spirits, nor had there been so many assembled.

We are, sir, your servants,

PHILIP R. YOUNGE,  
GEORGE ATKINSON.

Don JUSTO LOPEZ,  
*Commandant of Amelia.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Tran. Sup. Court, E. D. F.*



## No. 17.

FERNANDINA, *March 18, 1812.*

SENOR GOVERNOR: With due regret I communicate to you the surrender of this post yesterday at seven in the morning. Eight gun-boats got under way, and came and anchored in front of this post; they pointed their guns upon us and beat to quarters. At two o'clock of the same day there came from Mr. Low's house, where they had been encamped, two hundred and thirty of the rebels. As soon as the gun-boats made their appearance I wrote to the commander of them to know what his intentions were, and his answer was, to say that his orders were to protect and assist the rebels. Under these circumstances we found ourselves obliged to surrender. They think of marching to-day to that city, and, as I have understood, the greater part of the inhabitants of St. John's are united with them, as also Don William Craig; they say, also, that in that city there are many of their party. The gun-boats, it is said, will leave to-day for St. John's and St. Augustine.

All these people, sir, have no organization whatever, and can only succeed in their enterprise by surprise. The most extensive calculation that I can make of their forces, calculating with the rebels of St. John's, will not amount to five hundred men.

God preserve your excellency many years.

JUSTO LOPEZ.

His Excellency Don JUAN DE ESTRADA.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int. and Tran. Sup. Court, E. D. F.*

## No. 18.

FERNANDINA, *March 20, 1812.*

SENOR GOVERNOR: With the greatest regret I have to inform you that in consequence of eight United States gun-boats anchoring in front of this station, with two cables fore and aft, their guns turned upon the town, the matches lit, and a perfect order of attacking us, I was obliged to surrender the post and town by a vote of the citizens generally, owing to the impossibility of defending it, to a large number [of] rebels and insurgents of this province, united with a number of the citizens of the United States. The communication between this post and that of St. Augustine is suspended, as I have had no correspondence with the government for some time past, in consequence of its being cut off by the insurgents.

The troops of the United States are in possession of this island, and General Mathews at the head of them. On the 17th, at four in the afternoon, this post was surrendered. Under date of the 19th I notified our consul at Charleston that he might be pleased to notify it to

the captain general, and to our minister, Mr. Onis; on the 19th the insurgents, and the citizens of the United States with them, have marched to demand the surrender of that city; and we believe some gun-boats will go outside to support and assist them.

God preserve your excellency many years.

JUSTO LOPEZ.

His Excellency Don JUAN JOSE DE ESTRADA.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int. and Tran. Sup. Court, E. D. F.*

No. 19.

FERNANDINA, May 19, 1812.

SEÑOR GOVERNOR: As there has been no opportunity offering since the taking of this place for that city before this time, I have not forwarded the documents inclosed, which contain a copy of the correspondence translated that passed in those days, by which your excellency will be pleased to acquaint yourself of the contents of them, accompanying, at the same time, the plan showing the state of the post and manner in which it was attacked.

As I have had no intimation of the papers forwarded to your excellency containing reports up to this time having been received by you, and knowing the city deficient of the means of notifying the occurrence to his lordship, the captain general, I have taken the liberty of forwarding to his lordship the report of what has occurred, inclosing to him a similar plan of the situation, manifesting to him the state of the province, the city besieged by the rebels and American troops, and the post blockaded by a United States armed brig and two gun-boats.

To his lordship, the Chevalier de Onis, our minister in the United States, I have also forwarded copies, in order that, through every channel, the news should reach our capitals with the greatest speed. Having, at the moment, notified our consul at Charleston of the taking of the post, that he might communicate it the minister and captain general.

God preserve your excellency many years.

JUSTO LOPEZ.

His Excellency Don JUAN JOSE DE ESTRADA.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int. and Tran. Sup. Court, E. D. F.*

## No. 20.

ST. AUGUSTINE, FLORIDA, *June 11, 1812.*

I have just arrived in this city, and taken charge of the command of it as civil and military governor proprietary, appointed by the serene regency of the kingdom ; and it appearing very strange to me to find United States regular troops encamped in the vicinity of it, when my nation is at peace and on friendly intercourse with the said United States, according to the treaties of amity and commerce celebrated between both nations, when there has preceded no declaration of war.

I have thought proper to give you this notice that you may, if you think it convenient, be pleased to come to this city, or commission one of your confidential officers, for the purpose of holding a conference with me, assuring you, upon the honor of a gentlemen, that his person shall be looked upon and treated with the utmost respect.

God preserve you many years.

S. K.

P. D. This official communication will be handed to you by the sergeant-major of this city, Captain Don Francisco Rivera.

KINDELAN.

The COMMANDER OF THE AMERICAN TROOPS,

*Encamped near this City.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int'r and Trans'r Sup. Court, E. D. F.*

## No. 21.

UNITED STATES ENCAMPMENT,

*June 12, 1812.*

SIR: I had the honor to receive your excellency's communication of yesterday, by the sergeant-major, Don Francisco Rivera ; and, in conformity with your request, have directed Captain Joseph Woodruff, of the third United States regiment of infantry, and Lieutenant George Haig, of the United States dragoons, to wait upon your excellency, assuring your excellency that they possess my full confidence, and that they are entitled to entire faith and credit. I avail myself of this occasion to inform your excellency that the negotiating powers with your excellency are now vested by the government of the United States in his excellency, David B. Mitchell, governor and commander-in-chief of the State of Georgia, and that, as United States commissioner, they are plenary ; and further, that his excellency is now in St. Mary's, in the State of Georgia, where I will, with great pleasure, send by express any communication your excellency may wish to make. I take the liberty to add, that the late commandant of St. Augustine, would have heard again from his excellency, had not his troops fired upon my

command before the expiration of the time allowed for the return of Colonel Cuthbert.

I reciprocate your good wishes, and am, with the highest consideration, most respectfully,

Your excellency's obedient servant,

T. A. SMITH, *Lieut. Colonel,*  
*U. S. Regiment Riflemen.*

His Excellency SEB. KINDELAN,

*Governor Proprietary, Politic and Military, &c.*

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine,  
[L. S.] Florida, this thirteenth of September, A. D. one thousand eight hundred and thirty-four.

ANTONIO ALVAREZ, *K. P. A.*

I reciprocate your good wishes, and am, with the highest consideration, most respectfully, your excellency's obedient servant,

T. A. SMITH, *Lieut. Colonel,*  
*U. S. Regiment Riflemen.*

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine,  
[L. S.] Territory of Florida, this thirteenth day of September, A. D. one thousand eight hundred and thirty-four.

ANTONIO ALVAREZ, *K. P. A.*

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No. 22.

ST. AUGUSTINE, FLORIDA, *June 12, 1812.*

In consequence of your not being authorized to confer with me respecting the disagreeable occurrences that have been occasioned by the troops under your command in this province, according to what you say to me in your communication of this day, I have nothing to say to the two officers that you have sent to this city; and for the purpose I will direct myself to his excellency the governor of the State of Georgia, Don David B. Mitchell, commissioner on the part of the United States; and, in the meantime, I pray you to retire with the troops under your command to the other side of the river St. John's, without affording any protection, active or passive, to the revolvers of this province, who, under the protection of the United States arms, they dare to commit disturbances of all kinds against the loyal subjects of it.

God preserve you many years.

S. K.

T. A. SMITH, Esq., *Lieut. Col. of the Rifle Corps of the U. S.,*  
*and Com. of the Troops encamped in the vicinity of this City.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int'r and Trans'r Supreme Court, E. D. F.*

No. 23.

UNITED STATES ENCAMPMENT,  
*June 13, 1812.*

To his Excellency Sebastian Kendelan, Governor Proprietary, Politic, and Military, &c., &c.

SIR: In reply to your excellency's communication of yesterday, I have to observe, that my instructions command me to maintain my present position. To prevent the effusion of blood pending the negotiation with his excellency Governor Mitchell, I must request that no parties may be sent from the town, as I shall feel myself obliged to repel any force which may appear without the reach of your cannon.

I am, with the highest consideration, most respectfully, your excellency's obedient servant,

T. A. SMITH,  
*Lieutenant Colonel United States Regiment Riflemen.*

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine, Territory of Florida, this thirtieth day of September, A. D. [L. S.] eighteen hundred and thirty-three.

ANTONIO ALVAREZ,  
*Keeper of Public Archives.*

No. 24.

ST. AUGUSTINE, FLORIDA, *June 13, 1812.*

I have received the communication which, by your order, and under this date, has just now been handed to me by one of the officers of your command, and in answer to which I say to you that I do not admit, and never will admit, to be dictated to. For my troops, in whatever place or situation they may find themselves, if they be insulted, will sustain their character; and in consequence whereof, at any event, I shall act with energy, which characterize the Spanish nation, well satisfied that the result will fall upon the first aggressors; declaring to you that in future you must abstain from sending any further com-

munication to this city, for the bearer of them will be sent back without being heard, while the present differences take a new aspect and course becoming two nations who are, happily, at peace and harmony.

God preserve you many years.

G. K.

THOMAS A. SMITH, Esq.,

*Lieutenant Colonel of the United States Rifle Corps, and  
Commander of the Troops Encamped in the vicinity of this City.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed,

JOSEPH S. SANCHEZ,

*Interpreter and Translator Supreme Court, E. D. F.*

No. 25.

ST. MARY'S, May 4, 1812.

SIR: The President of the United States has commissioned me to communicate with you on the transactions which have recently taken place in East Florida, and in which the forces of the United States have been used, and I am authorized to assure you that these transactions were not authorized by the government.

I hasten to make this communication, under the fullest confidence that it will be received as evidence of the friendly disposition of the government of the United States to that of Spain, and of their desire to maintain and preserve uninterrupted that harmony which has so long subsisted between the two nations.

I send my aid-de-camp, Colonel Cuthbert, to you with this letter, who will, if you desire it, wait for and bring me your answer, which I have to request in writing. In the meantime, if you are disposed to make any verbal communications to him with the view of conveying your sentiments to me in that way, on any point regarding the business upon which he is sent, you may have reliance upon his honor in executing your wishes in that respect.

I am, sir, with high consideration, your very obedient servant,

D. B. MITCHELL.

The GOVERNOR OF EAST FLORIDA, *in St. Augustine.*

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine, Territory of Florida, this thirteenth day of September, A. D. [L. S.] eighteen hundred and thirty-four.

ANTONIO ALVAREZ.

*Keeper of Public Archives.*

## No. 26.

ST. AUGUSTINE, FLORIDA, *May 9, 1812.*

EXCELLENT SIR: On this day I have received, by your aid-de-camp, Colonel Cuthbert, your letter written at St. Mary's, Georgia, on the 4th instant, in which you are pleased to say to me that you are commissioned by his excellency the President of the United States, to treat with me on the subject of what is occurring in this country, owing to the active part taken by the United States regular troops, whose proceedings have been disapproved of by the government, with the desire of continuing the good harmony which for so long a time has subsisted between the two nations.

The Spanish nation have endeavored, on their part, to accredit, scrupulous, by their good faith in the fulfillment of the treaties, and should not have supposed that she should be exposed even to insult, which she has suffered in this province of East Florida, which is under my charge.

By the public papers of the United States, which I have seen, announcing the disapproval of the hostile proceedings of General Mathews and Commodore Campbell, I should have supposed that the forces of the American government would have, before this, withdrawn. Until which event, I can proceed to treat on nothing; and, in the mean time, I protest, as I have verbally expressed to Colonel Cuthbert, against any occurrence which might take place, as I do not recognize any authority this side of the dividing line, established by both nations in their treaties of peace, limits, and navigation, of the 27th of October, 1795.

God preserve your excellency many years.

His Excellency D. B. MITCHELL,  
*Governor of the State of Georgia.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOSEPH S. SANCHEZ,  
*Int. and Trans. Sup. Court, E. D. F.*

## No. 27.

ST. AUGUSTINE, FLORIDA, *June 11, 1812.*

EXCELLENT SIR: I have this day arrived in this city, and taken possession of it and its province as civil and military governor, appointed by the serene regency of Spain, which, in the absence of our beloved sovereign, Ferdinand VII, reigns.

I give this notice to your excellency for what good harmony, which should make the two territories happy, which are under our charge; and more particularly in consequence of my having been informed that, on the 17th of March last, several gun-boats of the United States, stationed in the St. Mary's river, Georgia, had presumed to enter upon



our waters and menace the town of Fernandina, on Amelia Island, indicating having made themselves active parties in an insurrection, prepared, assembled, and, to appearances, fomented in that country, with the premeditated design of possessing themselves of this said province under my command, as, in fact, they have done of a part of it. The United States regular troops, being in possession of that territory and encamped in the vicinity of the said city, (all of which, as I am informed, has been done by orders of General Mathews,) notwithstanding that our respective governments are in the best correspondence and friendship; which proceeding is an act of hostility that, in any point of view, compromises both nations to take part in the discord, which, probably, had no other origin than in the ambition or intrigues of a few excited and revolutionary heads. Your excellency ought to consider that my duty does not permit me to tolerate, for one single moment, the existence of said troops in the province which has been confided to me; and, in consequence of which, (although with regret,) I will be forced to take disagreeable measures, which, if they do not leave it, will cause universal execration to fall on the promoters of such unjust aggressions. And with this view, in the name of my august sovereign, Don Ferdinand VII, and in the name of all the Spanish nation, I invite your excellency, first of all, to order said troops under your command to evacuate from the Spanish territory within the term of eleven days from the date hereof, not doubting for a moment that your excellency, convinced of the vehement reasons which impel me to demand this demonstration of your good faith, and convinced of what is the interest of humanity and that of the happiness of the frontier, will so order it.

Your excellency will be assured that, under any other aspect and circumstances, I would be glad to occupy myself in obsequiousness to you, assured of the high consideration due to the virtues which adorn your person.

This communication will be handed to your excellency through Don José de la Maza Arredondo, and I beg your excellency will be pleased to deliver to him your answer, which you may think convenient to make, as early as possible, granting to him a pass for this city.

God preserve your excellency many years.

S. K.

His Excellency DAVID B. MITCHELL,  
*Governor of the State of Georgia.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOSEPH S. SANCHEZ,  
*Int. and Trans., Sup. Court, E. D. F.*

No. 28.

ST. MARY'S, *June 16, 1812.*

SIR: I have the honor to acknowledge the receipt of your letter, dated at St. Augustine, the 11th of the present month, handed me by Mr. Joseph Arredondo.

On the 9th of last month, I made a communication to the gentleman then acting as governor of East Florida, in which I declared, in the name of the government of the United States, that the use made of their troops in the late transactions in East Florida was unauthorized by that government. Immediately after making this frank declaration, which I presumed to believe ought to have been received as evidence of the friendly disposition of the United States government to that of Spain, and before I had time to reply to the answer I received, an attack was made upon the troops of the United States by a party from St. Augustine.

This attack being made at a moment when I was proceeding to offer, and had in part offered, the most sincere and friendly explanations on the part of the United States for the part they had apparently taken in the late transactions in East Florida, precluded all further efforts on my part to continue the correspondence, believing, as I did, that it was an indignity wantonly offered to the honor and integrity of the government I represented.

Under the impressions which this transaction was calculated to produce, and which you, as a man of honor and a soldier can readily conceive, I am persuaded you do not expect me either to withdraw the troops, or to make any propositions for that purpose, until such explanation is given for the attack made upon them as will evince the sincerity of the desire you express of seeing the harmony of the two countries preserved, and be consistent with the honor of the United States to receive.

In the meantime, should your excellency proceed, as you intimate you will, to acts of hostility upon the United States troops, after the expiration of eleven days from the date of your letter, without having satisfied the just expectations of the President as to the cause of the attack made upon them, of which I have already spoken, be it so; I shall regret the circumstance, but you alone will be answerable for all the consequences which may result from such a proceeding. I can make any sacrifice of my individual feelings when placed in competition with the welfare of my country, but the honor of the nation can never, not for an instant, be called in question.

I can assure your excellency, with the greatest sincerity, that if you commence hostilities with the intention of driving the American troops from their present station, you will then find, by experience, that the forbearance of the United States hitherto has proceeded neither from the want of power nor provocation, but from considerations arising out of the present unusual and critical situation of the Spanish monarchy,

and a sincere desire to avoid hostilities with a nation with whom they have been so long in harmony.

I have the honor to be, with sentiments of high respect, your excellency's most obedient and very humble servant,

D. B. MITCHELL.

His Excellency SEB'N. KINDELAN,

*Governor, Civil and Military, of the*

*Province of East Florida, St. Augustine.*

I, Antonio Alvarez, keeper of public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine, Territory of Florida, this thirteen day of September, anno Domini, one thousand eight hundred and thirty-four.

ANTONIO ALVAREZ, K. P. A.

No. 29.

ST. AUGUSTINE, *Florida*, June 23, 1812.

Informed by your excellency's official communication, dated the 16th instant, that the peaceable views of the United States respecting this territory under my command are far from differing in any manner from the opinions I had formed, I am confirmed in the belief that the countenancing of the little difficulties that have occurred would, in a friendly manner, be put a stop to, I will give your excellency, on my part, an unequivocal proof of my willingness to contribute to the removal of doubts which would tend to create feelings that should not exist between friendly governments who are neighbors. Protesting to your excellency that you ought to put away all cause of complaint, growing out of the attack which, you say, was made by a detachment of troops from this city upon the federal troops. Laying aside that they have invaded the Spanish territory, and trampled upon our rights, and pulled down our houses, I forget all, and assure your excellency that the detachment from St. Augustine never imagined the commission of hostilities upon the American troops. A number of the rebels, who have disturbed the peace of this territory, were occupying and fortifying a house upon the banks of Moses creek, from whence they were overlooking the operations of this city, and obstructing the use of the creeks appertaining to it; and, what is more, the sight and proximity of them roused the known fidelity of the inhabitants of this city. Under such circumstances, the honor of the government, and the indisputable right that she has of vigorously punishing those who shamefully abandon their duties, was what determined my predecessor in this command to order that some of our most subtle forces should go to dislodge the rebels, as it was done. I would do injury to the American name, if I could believe that their troops could have taken part in favor of the perverse; but if any, misled, or ignorant of their duty, intermixed with the rebels, they should no doubt have some

part of the punishment that was assigned for them; in which case all the blame of the fact falls upon those who meddle in matters that do not concern them; under which firm conception your excellency may, if you think proper, charge your troops with what may be the results to them.

Be pleased to observe with what candor and good faith I satisfy, in a friendly manner, on my part; it now remains for your excellency, being faithful to your promise, to order that your troops immediately evacuate the province under my command, as an indispensable measure which should precede all further communication, and without which your excellency, by making void the character of your promises, would be sowing distrust, which would undermine good faith, and may lead to melancholy consequences, in which Spanish sincerity can have no part, and will in all cases accredit that virtue is ever united to the bravery and firmness that characterizes her.

God preserve your excellency many years.

His Excellency DAVID B. MITCHELL,  
*Governor of the State of Georgia.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Trans. Sup. Court, E. D. F.*

No. 30.

ST. MARY'S, *July 6, 1812.*

SIR: I hasten to reply to your letter of the 23d June, delivered to me last evening by Mr. Joseph Arredondo.

I confess I am much at a loss in what light to consider your observations respecting the attack made upon the United States troops. You set out by observing that you can see nothing in the attack made upon them that ought to cause the least complaint; and I with candor admit, that if the attack had been made before any explanation was offered on the part of the United States, the observation would have been more correct; but its being made at a moment when the United States were offering friendly and sincere explanations, nothing could be more offensive, because it equivocally called in question the sincerity, and, consequently, the honor and integrity of the government.

I entertain too high an opinion of your character, and too much respect for your judgment and patriotism, to believe for a moment that you would consider an indignity of the nature of the one complained of as a trifling dispute, and am, therefore, constrained to believe that you have not been correctly informed of the facts.

The truth is, the troops were stationed on the bank of the river, and occupied the house at Mossey to which you refer, and the patriots were several hundred yards in their rear, and not in gunshot of the river; neither was it possible for the troops to impede the free use of the creeks and other water-courses leading to or from St. Augustine, since

they had neither boats nor canoes; and, in fine, they were making no demonstration of hostility other than their presence afforded, and furnished no particular reason for an attack at that time, more than at any time previous; and if their situation enabled them to overlook the operations in St. Augustine, it equally enabled those in that place to see and know all the facts I have stated. The declaration, therefore, that the party from St. Augustine had not the most distant idea of committing hostilities against the American troops, is so opposite to the facts, that I must believe, as you were not in the province at the time, that you have been deceived, and that the communication which I made previous to that attack had not obtained confidence with those at that time in authority in St. Augustine.

When you state that, if faithful to my promise, I will withdraw the troops without delay from the province under your command, I am induced to believe that you have not favored me so far as to give my last letter an attentive perusal. In that I stated my full persuasion that you did not expect me either to withdraw the troops, or to make any proposition for that purpose, until such explanation was given for the attack made upon them as would evince the sincerity of the desire you had expressed, of seeing the harmony of the two countries preserved, &c. Now, sir, I have already shown that the explanation you have given is in direct opposition to facts, and does not embrace the point upon which the explanation was required or expected.

I assure your excellency that, when I embarked in this business, it was with the most sincere desire to adjust all the differences which had arisen in consequence of the previous transactions in the province; and had my first efforts been met by corresponding ones, and with equal sincerity on the part of those then in authority in St. Augustine, I have no doubt but every difficulty would have been long since adjusted. That was, however, not the case, and for the consequent delay I am no ways chargeable, any more than I can be for the final result.

There is, however, another subject, which the candor that characterizes the government of the United States requires me to present to your consideration; I mean the black troops which you have in your service. Your certain knowledge of the peculiar situation of the southern section of the Union in regard to that description of people, one might have supposed, would have induced you to abstain from introducing them into the province, or of organizing such as were already in it. The contrary I am well assured is, however, the fact; and I may venture to assure you that the United States will never tolerate their remaining in the province. It will readily occur to you, also, that the war now existing between this country and Great Britain imposes upon the United States the necessity of a more vigilant regard and attention to what passes in a neighboring province, and more especially the fact to which I have called your attention. Neither will it escape your observation, that for the use made of those troops you alone will be responsible.

I pray your excellency to accept the assurances of my personal respect and esteem.

D. B. MITCHELL.

His Excellency SEB'N KINDELAN,  
*Governor, &c., East Florida.*

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office at the city of St. Augustine, Territory of Florida, this thirteenth day of September, A. D. [L. s.] one thousand eight hundred and thirty-four.

ANTONIO ALVAREZ, *K. P. A.*

No. 31.

ST. MARY'S, *July 10, 1812.*

Mr. Anthony Martines has my permission to carry his daughter to St. Augustine in the vessel which carries the family of Mr. Justo Lopez. He will, however, satisfy the commandant of the American troops at Amelia of his intention to return, and that he will carry nothing with him but necessary provision.

D. B. MITCHELL.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine, Territory of Florida, this 30th day of September, A. D. 1834. [L. s.]

ANTONIO ALVAREZ, *K. P. A.*

No. 32.

CAMP NEW HOPE, *December 23, 1812.*

A picket guard from St. Augustine, composed of a corporal and three men, viz: Pedro Gigow, (corporal,) Nicholas Pogis, José Rosario, and Juan Roquills, were taken by the patriots of East Florida about the 29th of November last, near St. Augustine, and brought to the American camp, where they have been till now detained.

As the United States are not at war with the Spanish people, it is ordered that these men be furnished with one ration each and discharged.

Whilst the present state of things endure, no hostile act will be performed against the Spanish government, provided they observe the same line of conduct towards the Americans and patriots of East Florida. Any armed party that may be sent out from St. Augustine will, therefore, be repelled by force.

A copy of the foregoing will be handed to John H. McIntosh, director of the territory of East Florida, that he may issue orders to the patriots in conformity therewith.

Colonel Smith is charged with the execution of the above.

THOMAS FLOURNEY,  
*Brigadier General, United States Army.*

DECEMBER 23, 1812.

Actuated, as the patriots have ever been, by a perfect moderation, and governed only by a determination to become free and independent of the government of St. Augustine, without having any enmity to the inhabitants and soldiers of that place, I do declare my perfect acquiescence to the order of Brigadier General Flourney, hereunto annexed; and I most willingly agree that Corporal Pedro Gigow, and Nicholas Pogis, José Rosario, and Juan Roquills, who were captured by the patriot forces, shall return to St. Augustine; and all persons in the patriot cause are ordered not to intercept the said soldiers on their way to St. Augustine. Their arms and horses are detained in lieu of arms and horses of the patriots which have been carried into St. Augustine. As this passport may reach the eye of Governor Kindelan, I beg leave to remark, that it might have been expected that the uniform examples exhibited by the patriots of clemency and generosity would not have been followed by an order to cut in pieces any patriots who might have been met with by parties from St. Augustine.

JOHN H. MCINTOSH,

*Director of the Territory of East Florida.*

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine, Territory of Florida, this 30th day of September, A. D. 1834.  
[L. s.]

ANTONIO ALVAREZ, *K. P. A.*

No. 33.

HEADQUARTERS, CHARLESTON, *March 26, 1813.*

SIR: The President of the United States having appointed me to command the troops in the Southern States, and committed to me the management of their concerns with the province of East Florida, I have the honor of making known to your excellency the trust which has been reposed in me, and to assure you of the pleasure it will afford me to concur with you in placing on the most amicable footing these important interests; and, in furtherance of this intention, I have to inform you that Mr. Onis has communicated to the Secretary of State an act of amnesty for the insurgents of Florida who have been induced to revolt by an agent of the United States, whose proceedings in that respect were unauthorized; and I have to request your excellency to inform me whether you are prepared to proceed in conformity to the above-mentioned act.

My aid-de-camp, Mr. Morris, will have the honor of delivering this letter to you, and, if you please, of conveying your answer to me. He has it in charge to assure you of the high consideration with which I have the honor to be, your excellency's most obedient servant,

THOMAS PINCKNEY,

*Major General, United States Army.*

His Excellency Governor KINDELAN.



I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine,  
[L. S.] Territory of Florida, this 1st day of October, A. D. 1834.

ANTONIO ALVAREZ, K. P. A.

No. 34.

ST. AUGUSTINE, FLORIDA, *March 31, 1813.*

In answer to your letter of the 20th instant, which I have just received through your aid-de-camp, Mr. Morris, I say that by the annexed certified copy of the edict, published in this city under my command on the 15th of the same month, you will perceive that the general pardon of which you make mention has been duly complied with; consequently it would give me much pleasure to concur with you in the important measures suggested to me by you, so far as they come within the circle of my authority; but beyond the execution of that favor, which has been, and will be, carried into effect in all its parts, I must observe to you, that to enter upon the other incidents that may thereto relate, it is not proper I should do so while the United States troops are in the Spanish territory which has been confided to me.

With this motive I have the honor, sir, of offering myself, with the highest considerations, at your service.

God preserve your life many years.

S. K.

THOMAS PINCKNEY,

*General of the United States Troops.*

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int. and Trans. Sup. Court, E. D. F.*

No. 35.

SAVANNAH, *April 7, 1813.*

SIR: I received this day your excellency's letter of the 31st March, and in answer thereto I have the honor to inform you that the troops of the United States will be speedily withdrawn from the province of East Florida, for which the preparatory order has been already issued, and that I shall set out this day to proceed on my route to Saint Mary's, where I can have the satisfaction of a more expeditious communication with your excellency.

I beg leave to offer to your excellency the assurance of the great respect with which I have the honor to be, your most obedient servant,  
THOMAS PINCKNEY.

His Excellency Gov. KINDELAN.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the [original] on file in my office.

Witness my hand and seal of office at the city of St. Augustine, Territory of Florida, this first day of October, A. D. one [L. s.] thousand eight [hundred] and thirty-four.

ANTONIO ALVAREZ,  
K. P. A.

No. 36.

ST. AUGUSTINE, FLORIDA, *April 16, 1813.*

I have this moment received your letter of the 7th instant, in consequence of which I pray you to do me the honor to communicate to me previously the day you may determine upon to withdraw from the river St. John's and Amelia Island the troops under your command, that I may order that those of mine may occupy on the same day those points, with the view of preventing any excess that might be attempted by any one or more of the rioters upon the properties and persons of the inhabitants of this province, which, I think, may be prevented; if you think proper, those that are upon the said river should evacuate first, that from thence I may provide for sending the garrison destined to Amelia Island, and that neither one nor the other point should be for one moment without a garrison, to cause the good order to which you and myself aspire to be kept.

As I have no doubt of the interest you take of the most speedy tranquillity on the borders, I dare supplicate you will interpose your authority to prevent that persons of no character, or vagabonds from the State of Georgia, should assemble those discontented persons who there yet may be, owing to this new order of things, remaining in this territory still; because the excesses to which such a class of people might ordinarily proceed might compromit that peace which ought to make both countries [happy,] and, consequently, disturb the good harmony existing so happily between the two powers.

With the highest respect I offer you again my most humble regards, praying God to preserve your life many years.

General THOS. PINCKNEY.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Trans. Sup. Court, E. D. F.*

No. 37.

ST. MARY'S, *April 16, 1813.*

SIR: I had the honor of addressing your excellency from Savannah on the 7th of this month, to inform you that, in consequence of your

communication of the 31st of March, the troops of the United States would be speedily removed from East Florida, and having arrived at this place with the intention of carrying this measure into effect, I again despatch my aid-de-camp, Mr. Morris, to be the bearer of my respects to your excellency, and to inform you of the arrangements made for the above purpose.

You may with confidence rely on what he shall say to you concerning it in my behalf.

I have the honor to be, with great respect, your excellency's obedient servant,

THOMAS PINCKNEY.

His Excellency the GOVERNOR OF EAST FLORIDA.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office at the city of St. Augustine, Territory of Florida, this first day of October, A. D., one thousand eight hundred and thirty-four.

ANTONIO ALVAREZ, *K. P. A.*

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No. 38.

St. MARY'S, *April 18, 1813.*

SIR: At the moment in which my aid-de-camp, Mr. Morris, is about to embark, for the purpose of making known to your excellency the mode and time in which I propose to withdraw the troops of the United States from the posts they have occupied in East Florida, I am honored with your dispatch of the 16th of this month; and I am flattered by observing that the measures I had directed him to propose coincide so nearly with the desire expressed by your excellency.

I am here vested with the military, but have no control over the civil, authority; but you may be assured that my best endeavors shall not be spared to maintain the harmony which it is so much the interest of our respective nations to cultivate.

I have the honor to be, with high considerations and respect, your excellency's most obedient servant.

THOMAS PINCKNEY.

His Excellency the GOVERNOR OF EAST FLORIDA.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine, Territory of Florida, this first day of October, one thousand eight hundred and thirty-four.

ANTONIO ALVAREZ, *K. P. A.*

## No. 39.

ST. MARY'S, *April* 18, 1813.

SIR: The conviction with which I am impressed, that the measure I am about to suggest to your excellency will be attended with beneficial consequences to the province in which you command, will, I trust, apologize for my proposing it for your consideration.

In publishing the amnesty granted by the regency of his Catholic Majesty to the insurgents of Florida, your excellency has limited the period for their acceptance to four months. A number of the most influential among them have planted their crops, and will be greatly distressed if obliged to remove their negroes and relinquish those crops on the approaching evacuation of the posts now held by the troops of the United States; at the same time they are unwilling to return, permanently, to the situation of Spanish subjects, and have issued here an extraordinary publication, in consequence of which I should not address your excellency on this subject, were I not assured that your magnanimity and knowledge of mankind would induce you to attribute these effusions to their proper cause, and not permit them to prevent you from doing what you may think advantageous to your province. If these persons, then, could be permitted to reap the crops they have planted, they would be bound by the strong tie of their interest to demean themselves, to the period of that indulgence, with propriety. The destruction of their crops would not benefit, but, on the contrary, must, by the diminution of the export, be prejudicial to the interest of Florida; and, by driving the proprietors to despair, may cause the renewal of scenes which, though unsupported by any countenance from the government of the United States, might prevent the restoration of that tranquillity in the province you command, which is at all times desirable, and would be more particularly so at this period. This, in my opinion, would be prevented by your excellency's extending the time limited for acceptance of the amnesty from four to seven or eight months; during this time, their quiet demeanor being insured by the tenure of their property, the minds of all parties would be tranquillized, and they would be prepared either to retire quietly with their property, at the end of that period, or to continue peaceable subjects of his most Catholic Majesty.

Whatever shall be your determination on this subject, I beg you to be assured, sir, that this suggestion is dictated by no other motive than the strong desire I feel that such measures should be adopted as will completely bury in oblivion the past unfortunate transactions, and such as would, at the same time, be honorable and satisfactory to your excellency.

Being, with great consideration and respect, your excellency's most obedient servant,

THOMAS PINCKNEY.

His Excellency the GOVERNOR OF EAST FLORIDA.

I, Antonio Alvarez, keeper of the public archives of East Florida,

do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of St. Augustine, Territory of Florida, this first day of October, A. D. one thousand eight hundred and thirty-four.

ANTONIO ALVAREZ, *K. P. A.*

No. 40.

ST. AUGUSTINE, FLORIDA, *April 26, 1813.*

I have received by your aid-de-camp, Mr. Morris, your two letters, of the 16th and 18th of the present month, in which you have been pleased to do me the honor of communicating to me your orders relative to the evacuation of the troops of your command; and in consequence whereof Mr. Morris, authorized by you, and myself have agreed, that those stationed on the river St. John's should retire in all the 29th day of the same month, and those upon Amelia Island the 6th of next coming May.

I am also flattered that my anticipated arrangement should coincide with those of your own; a casualty which I believe attributable to the uniformity of principles animating us both, and for which I offer you my most sincere thanks.

I have the honor of offering, with the highest consideration, my respect for you, praying God will preserve your life many years.

S. K.

To General THOMAS PINCKNEY.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,

*Int. and Tran. Sup. Court, E. D. F.*

No. 41.

ST. AUGUSTINE, FLORIDA, *April 26, 1813.*

In answer to another of yours of the 18th instant, which has also been delivered into my hands by your aid-de-camp, Morris, I have the honor of saying, that the pardon promulgated in this city on the 15th of last month, is general and unlimited; wherefore all those who may wish to avail themselves of it will be cherished and protected, forgetting all that has passed. You may consider that he who objects to avail himself of this favor, cannot be permitted to reside in the country; or, at least, I do not believe myself sufficiently authorized to permit it.

Under such circumstances, desiring to manifest to you the consideration to which your interposition in this affair is entitled to from me, I will presume to take upon myself the only means which I suppose might effect the end in which you have interested yourself; that is, that

I will consent that those proprietors should name, for the time pending the present crop, persons of the confidence of this government—that is to say, Spaniards or naturalized subjects—that they may take care of, and administer for the season, their estates, extending myself so far as to permit that their agents should remit to them the produce, and other property, (movables,) paying the respective duty of exportation, and with the sole condition, that they are not again to place their foot in this territory.

I wish that the extension of my authority could present me many opportunities of manifesting to you the consideration and esteem with which I desire personally to serve you.

God preserve you many years.

To General THOMAS PINCKNEY.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*In. and Tran. Sup. Court, E. D. F.*

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No. 42.

ST. AUGUSTINE, FLORIDA, *April 28, 1813.*

I inclose to you the within letter, which was delivered to me on the evening of the 25th by your aid-de-camp, to be forwarded to the commander of the United States troops stationed upon the river St. John's, and which was returned to me by the dragoon whom I sent it by, as when he arrived there at seven in the morning of the 27th, they had already embarked, leaving the place of their encampment in flames, a circumstance which you and myself were desirous of preventing, with the view that it would facilitate for the present convenient lodgings for the garrison under my command, who were to occupy it on the 30th.

This, sir, is of little consequence, and I thereby should not have troubled you by mentioning it, were it not for the circumstances of their having consigned also to the flames the machinery and houses of the inhabitants Hollingsworth and Creagh, which act compels me to call your attention to favor the persons injured.

All countries abound with inconsiderate persons, the unwarrantable proceedings of which class of people very often disconcert the best concerted plans and measures. But I am persuaded that this disagreeable accident will in no manner change the just course which you and myself have pursued.

I remain, as always, with the highest considerations, at your service.  
God preserve your life many years.

General THOMAS PINCKNEY.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,  
*Int. and Tran. Sup. Court, E. D. F.*

UNITED STATES OF AMERICA,  
*District Court of the United States  
for the Northern District of Florida.*

I, George R. Fairbanks, clerk of the district court of the United States for the northern district of Florida, do hereby certify, that the foregoing 131 pages, together with sundry official letters or documents, numbered from No. 1 to No. 42, inclusive, hereto appended, with the certificate of said judge thereto, contain a full and complete, true and perfect transcript of the record and proceedings had in, together with the evidence adduced on the trial of, the case of Francis P. Ferreira, administrator of Francis Pass, deceased, against the United States.

In testimony whereof I have hereunto set my hand and affixed the  
[SEAL.] seal of the said court, this 4th day of December, 1851, and  
of the independence of the United States the seventy-sixth.

GEORGE R. FAIRBANKS,  
*Clerk of the District Court of the United  
States for the Northern District of Florida.*

I, Isaac H. Bronson, judge of the district court of the United States for the northern district of Florida, do hereby certify, that George R. Fairbanks, whose name is signed to the above certificate as clerk of the district court of the United States for the northern district of Florida, was at the time of signing said certificate, and is now, the clerk of the said court; that the said certificate is in due form of law and is entitled to full faith and credit.

I. H. BRONSON,  
*United States District Judge.*



